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No. 134

In the Supreme Court of the United States

OCTOBER TERM, 1947

REPUBLIC NATURAL GAS COMPANY,
Appellant,

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, and PEERLESS OIL AND GAS COMPANY, a Corporation,
Appellees.

BRIEF OF APPELLEES

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Appeal from the Supreme Court of the State of Oklahoma

SUBJECT INDEX

	Page
Preliminary Statement	1
Jurisdiction	2
The Commission's Findings	5
The Evidence	9
Argument and Authorities	21
Statutes Involved	2
Proposition 1: Republic has sought and obtained the benefits of the Statutes involved and is estopped to deny their validity.	21
Proposition 2: The enactment of legislation governing ownership of property and providing for the reciprocal rights and obligations with reference thereto is within the exclusive jurisdiction of the State.	26
Proposition 3: Republic is a common purchaser and a common carrier of natural gas, and it is therefore required to take natural gas ratably from Peerless Oil and Gas Company	33
Proposition 4: The order of the Commission involved herein constitutes a valid exercise of police powers of the State for the protection of correlative rights.	42
Conclusion	91-92
Appendix "A"—Tabulation of Exhibits reflecting pages of introductions and pages at which same are printed.	95-97
Appendix "B"—Portions of Revised L. ..s of 1910 as amended.	98-101
Appendix "C"—Chapter 99, Session Laws 1913	102-112
Appendix "D"—Chapter 198, Session Laws of 1913	112-114
Appendix "E"—Chapter 197, page 398, Session Laws of 1915	115-120
Appendix "F"—Chapter 93, Session Laws of 1913	121-124
Appendix "G"—Order of Commission in Cause CD No. 861, Order No. 17410	125-144
Appendix "H"—Order of Commission in Cause CD No. 983, Order No. 17867	145-163

INDEX OF AUTHORITIES

Acton v. Blundell, 12 Mees. & W. 324	60
Affield v. New York, etc. R. Co., 203 U. S. 372	64
Amis v. Bryan Petroleum Corporation, 185 Okla. 206, 90 Pac. (2d) 936	47
In Re. Application of Jackson, et al., 179 Okla. 577, 66 Pac. (2d) 1101	34
In re. Assessment of Champlin Refining Co., 129 Okla. 166, 264 P. 160	39
Bacon v. Walker, 204 U. S. 311	58

Page

Bandini Petroleum Co., et al., v. Superior Court, Los Angeles County, California, et al., 284 U. S. 8 69
Banque De France v. Chase Nat. Bank of City of New York, 60 F. (2d) 702 (2 C.C.A.) 30
Barnes, et al. v. Keys, et al., 127 P. 261 28
Bassett v. Salisbury Mfg. Co., 43 N. H. 569, 82 Am. Dec. 178 59
Booth Fisheries v. Industrial Commission, 271 U. S. 208 22
Burford, et al. v. Sun Oil Co., et al., 319 U. S. 315, 321, 322 81
Carey, Receiver v. Corporation Commission, 168 Okla. 487, 33 Pac. (2d) 788 39
Champlin Refining Co. v. Corporation Commission, et al., 286 U. S. 210 40
Citizens State Bank of Barstow, Tex., v. Vidal, Collector of Internal Revenue, et al., 114 F. (2d) 380 (10th C.C.A.) 29
Clark v. Nash, 198 U. S. 361 64
Borden's Farm Products Co. v. Ten Eyck, 297 U. S. 251 64
Carondelet Canal and Navigation Company v. State of Louisiana, 233 U. S. 362 82
Champlin Refining Co. v. Corporation Commission of Oklahoma, et al., 286 U. S. 210 72
Champlin Refining Co. v. Commission, 286 U. S. 210 81
Cook v. Westgage-Greenland Oil Co., et al., 185 Okla. 209, 90 Pac. (2d) 940 49
Commissioner of Internal Revenue v. Skaggs, 122 F. (2d) 721 (5 C.C.A.) 30
Corzelius v. Harrell, 186 S. W. (2d) 961 90
Davies Warehouse Co. v. Bowles, Price Administrator, 321 U. S. 144 32
Davies Warehouse Co. v. Bowles, Price Administrator, 321 U. S. 144 2
Ex Parte Elam, 6 Cal. App. 233, 91 Pac. 811 60
Eckel v. Springfield Tunnel & Development Co., 262 Pac. 425 60
Eccles v. Ditto, 23 N. M. 235, 167 Pac. 726 60
Jackman v. Rosenbaum Co., 260 U. S. 22 63
John H. Fahey, et al. v. Paul Mallonee, et al., 67 S. Ct. Rep. 1552 23
Fallbrook Irrigation Dist. v. Bradley, 164 U. S. 112 63
Frew, et al. v. Bowers, Collector of Internal Revenue, 12 F. (2d) 625 (2 C.C.A.) 30
Forbell v. New York, 164 N. Y. 522, 58 N. E. 644, 51 L. R. A. 695 60
Franklin, et al. v. Margay Oil Corporation, et al., 153 P. (2d) 486 28
Gant v. Oklahoma City, 289 U. S. 98 51
Gant v. City of Oklahoma City, 289 U. S. 98 86
Garkane Power Co. v. Public Service Commission, 98 Utah 466, 100 P. (2d) 571 40
Grison Oil Corporation, et al. v. Corporation Commission, 186 Okla. 548, 99 P. (2d) 134 50
Gruger, et ux. v. Phillips Petroleum Company, 135 P. (2d) 485 51
Gulf Land Co., et al. v. Atlantic Refining Co., et al., 131 S.W. (2d) 73 40
Harper, et al. v. Lord, et al., 195 Okla. 386, 158 Pac. (2d) 472 49

Page

Hannis Distilling Company v. Mayor and City Council of Baltimore, 216 U. S. 288 77
Hammonds v. Commissioner of Internal Revenue, 106 F. (2d) 420 (10 C.C.A.) 30
Head v. Amoskeag Mfg. Co., 113 U. S. 9 61
Henderson v. Terrell, 24 F. Supp. 147 90
Hoyd v. Citizens Bank of Albany Co., 89 F. (2d) 105 (6th C.C.A.) 29
Hunter Company, Inc. v. McHugh, Commission of Conservation, et al., 320 U. S. 222 77
Inland Development Co. v. Beveridge, et al., 185 Okla. 174, 90 Pac. (2d) 942 49
Interstate Natural Gas Company v. Federal Power Commission, 329 U. S. 802 26
C. C. Julian Royalties Co. v. Capshaw, 145 Okla. 237, 292 P. 841 50
Katz v. Walkinshaw, 141 Cal. 116, 70 Pac. 663 59
Levering & Garrigues Co., et al., v. Morrin, et al., 289 U. S. 103, 105, 106 77
Lindsey v. McClure, 136 F. (2d) 65 (10th Circuit Court) 29
Marrs, et al. v. City of Oxford, et al., 32 F. (2d) 134 (8 C.C.A.) 47
Meeker v. East Orange, 77 N. J. L. 623, 74 Atl. 379 59
Munn v. Illinois, 94 U. S. 113 25
Nebbia v. New York, 291 U. S. 502 64
Nowata County Gas Co. v. Henry Oil Co., 269 F. 742 25
O'Donnell, et al. v. United States, 91 F. (2d) 14 (9 C.C.A.) 30
Ohio Oil Co. v. Indiana, 177 U. S. 190 81
Ohio Oil Company v. Indiana, 177 U. S. 190 64
Oklahoma Natural Gas Co. v. Corporation Commission, et al., 90 Okla. 84, 216 Pac. 917 39
Oklahoma Natural Gas Corporation v. State, 161 Okla. 104, 17 P. (2d) 488, 492 21
Oklahoma Natural Gas Corporation v. State, 161 Okla. 104, 17 Pac. (2d) 488 51
Pacific States Co. v. White, 296 U. S. 176, 186 50
Panhandle Eastern Pipe Line Co. v. The Public Service Commission of Indiana, et al., No. 69, October Term, 1947, Supreme Court of the United States 40
Parker, Director of Agriculture, et al. v. Brown, 317 U. S. 341 64
Parker, Director of Agriculture v. Brown, 317 U. S. 341 2
Patterson v. Stanolind Oil & Gas Co., 305 U. S. 376 2
Patterson v. Stanolind, 305 U. S. 376 77
Patterson v. Stanolind Oil & Gas Co., et al., 182 Okla. 155, 77 P. (2d) 83 75
Patterson, et al. v. Stanolind Oil & Gas Co., et al., 305 U. S. 376 36
Phillips Petroleum Co. v. Davis, et al., 194 Okla. 84, 147 Pac. (2d) 135 49
Pierce Oil Corporation v. Phoenix Refining Co., 259 U. S. 125 22
The Pipe Line Cases, 234 U. S. 541 22
Pipe Line Cases, 234 U. S. 548 64

Page

Railroad Commission of Texas, et al. v. Rowan & Nichols Oil Co., 311 U. S. 570, 577 ... 86
Railroad Commission v. Rowan & Nichols Co., 311 U. S. 570, 574 ... 81
Rich v. Doneghey, et al., 177 P. 86 ... 28
Russell v. Walker, 160 Okla. 145, 15 P. (2d) 114 ... 50
Seaboard Airline Ry. v. Watson, 287 U. S. 86 ... 36
Shaffer Oil & Refining Co. v. Creek County Gas Co., et al., 114 Okla. 258, 246 P. 630 ... 34
Southern Oklahoma Power Company v. Corporation Commission, et al., 96 Okla. 53, 220 Pac. 370 ... 38
Stanolind Oil Co. v. Marysville, 279 U. S. 582 ... 86
Sunderland v. United States, 266 U. S. 226 ... 30
Swift v. Calnam, 102 Iowa 206, 71 N. W. 233 ... 63
Texhoma Natural Gas Co. v. Railroad Commissioner, 59 F. (2d) 750 ... 89
Thompson, et al. v. Consolidated Gas Utilities Corp., et al., 300 U. S. 55 ... 22
Thompson, et al. v. Consolidated Gas Utilities Corporation, et al., 300 U. S. 55 ... 43
Wall, et al. v. Parrot Silver & Copper Company, et al., 244 U. S. 407 ... 22
Wells Fargo & Co. v. Mayor, etc., of Jersey City, 219 F. 699 (3 C.C.A.) ... 29
Winkler v. Anderson, 104 Kan. 1, 177 Pac. 521, 3 A. L. R. 268 ... 47

STATUTES

Chap. 99 Session Laws, 1913 (Appendix C) ... 3, 102
Chap. 198, Session Laws, 1913 (Appendix D) ... 3, 112
Chap. 197, Session Laws, 1915 (Appendix E) ... 4, 115
Chap. 93, Session Laws, 1913 (Appendix F) ... 5, 121
Sections 23 and 24, Article 2 of the Constitution of Oklahoma ... 8
Fifth Amendment to the Constitution of the United States ... 8
Fourteenth Amendment to the Constitution of the United States ... 8
Chapter 198, S. L. 1913 ... 24
Chap. 198, Session Laws, 1913 (Appendix D) ... 26, 112
Chap. 198, Session Laws, 1915 ... 27
Chapter 99, S. L. 1913 (Appendix C) (Now carried as Sections 21 to 35 of Title 52 O. S. 1914) ... 36, 102
Chap. 93, S. L. 1931 (Appendix F) ... 37, 121
Chap. 93, S. L. 1913 ... 40
13 C. J. S. at page 31 ... 41
Chap. 198, Session Laws, 1913 (Appendix D) ... 42, 112
Chap. 197, Session Laws, 1915 (Appendix E) ... 43, 115
Chapter 197, S. L. 1915 ... 57
Chapter 198, Session Laws 1913 ... 57
Chap. 198, Session Laws, 1913 ... 82
Chap. 197, Session Laws, 1915 ... 82
Session Laws, 1945, Title 52, Sec. 4 ... 84

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BRIEF OF APPELLEES

PRELIMINARY STATEMENT

Appellant will be referred to herein as Republic; the appellee, Corporation Commission of the State of Oklahoma, will be referred to herein as Commission, and the appellee, Peerless Oil and Gas Company, a corporation, will be referre dto herein as Peerless.

This proceeding was originally commenced before the Corporation Commission of the State of Oklahoma by application of Peerless Oil and Gas Company seeking a connection for a natural gas well drilled and owned by it pursuant to valid and subsisting oil and gas leases (R. 6). The

Commission, pursuant to proper notice and after a full and complete hearing of the issues involved entered its report, findings and order (R. 409). From the order of the Commission, Republic appealed to the Supreme Court of the State of Oklahoma and the order of the Commission was affirmed by that court (R. 453-464 inc.).

From the judgment of the Supreme Court of the State of Oklahoma, Republic has taken the appeal involved herein by timely filing of its jurisdictional statement and transcript of record. Republic's assignments of error appear at page 474, and statement of points to be relied upon at page 479 of the record.

This Court on October 13, 1947, noted probable jurisdiction.

JURISDICTION

Peerless has filed its objection to jurisdiction and motion to dismiss on the grounds, (1) the judgment involved is not final within the meaning of the applicable statute, (2) there is no substantial Federal question involved, and (3) the matters involved have been foreclosed by previous decisions of this Court. In addition to authorities cited therein by Peerless the attention of the Court is called to *Patterson* v. *Stanolind Oil & Gas Co.*, 305 U. S. 376; *Parker, Director of Agriculture* v. *Brown*, 317 U. S. 341; *Davies Warehouse Co.* v. *Bowles, Price Administrator*, 321 U. S. 144, in support of the latter two contentions.

STATUTES INVOLVED

The statutes involved have been incorporated in the appendices as a part of this brief.

Appendix B contains various provisions of the Oklahoma Revised Laws, 1910, relating to pipe lines and operators of pipe lines.

Chap. 99 Session Laws, 1913 (Appendix C), regulates corporations, associations and persons, engaged in the State of Oklahoma, in the business of carrying natural gas through pipe lines, the operators of gas wells, and the purchase of natural gas by pipe lines.

The statute provides, among other things, that every corporation, joint stock company, limited copartnership, partnership or other person, now, or hereafter exercising or claiming the right to carry or transport natural gas by or through pipe line or lines, for hire, compensation or otherwise, within the limits of the State of Oklahoma, shall perform all the duties of a common purchaser without discrimination, and are prohibited from owning or operating any gas well or wells, gas leases or gas holdings or interest in this State, unless the same shall become common purchasers and accept the provisions of said Act.

Chap. 198, Session Laws 1913 (Appendix D), upon which the Supreme Court of the State of Oklahoma based its affirmance of the order of the Corporation Commission, defines ownership of natural gas, provides for ratable taking of same, and makes it larceny to take natural gas except as provided for therein.

Section 1 of the Act provides that all natural gas under the surface of any land in Oklahoma is the property of the owners or gas lessees of the surface under which the gas is located in its original state.

Section 2 of the Act provides that any owners or oil and gas lessees of the surface having the right to drill for gas shall have the right to sink a well to the natural gas underneath, and take gas therefrom until the gas under such surface is exhausted. The drilling of a well by any owner or lessee reduces such gas to possession. In case other parties having the right to drill, sink other wells, then the

amount of gas each owner may take shall be proportionate to the natural flow of his well or wells.

Section 3 provides that any person, firm or corporation taking gas from a gas field, except for purpose of the development of gas or oil field, operating oil wells and for his own domestic use, shall take ratably from each owner of the gas in the proportion his interest bears to the whole, upon such terms as may be agreed upon between said owners and the parties taking such, or in case they cannot agree, at such price and upon such terms as may be fixed by the Corporation Commission, provided that each owner shall be required to deliver his gas to a common point of delivery on the surface overlying such gas.

Section 4 provides for damages in case of taking in violation of said statute.

Section 5 provides that the taking of gas, except as therein provided, shall consttute larceny and provides penalties therefor.

Chap. 197, Session Laws, 1915 (Appendix E) is an Act to conserve natural gas, to prevent waste thereof, provide equitable taking and purchase of same, conferring authority on the Corporation Commission, prescribing penalties for violation of the Act. Said Act prohibits production of natural gas in such manner and under such conditions as to constitute waste, provides that when the production in any gas field is in excess of the market demand then any producer may take therefrom his proportionate share, only, of the natural gas therefrom; said statute authorizes and directs the Commission to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the in-

terests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another.

Said Act provides that every person, firm or corporation engaged in the business of buying and selling natural gas shall be a common purchaser and shall purchase all natural gas which may be offered for sale which may be reasonably reached by its trunk line without discrimination in favor of one producer as against another.

Chap. 93, Session Laws, 1913 (Appendix F) provides that the term "public utility" shall be taken to mean and include every corporation, association, company, individuals, their trustees, lessees, or receivers that operate or manage any plant or equipment or any part thereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public.

(a) For the conveyance of gas by pipe line.

(b) For the production, transmission, delivery or furnishing of heat or light with gas.

THE COMMISSION'S FINDINGS

The Commission made findings in substance as follows:

Peerless is the owner of valid and subsisting oil and gas leases located in the Hugoton, Oklahoma Gas Field, including oil and gas leases covering Section 14, Township 6 North, Range 15 E.C.M. in Texas County, Oklahoma, and, as provided by law and regulations of the Corporation Commission, gave notice of intention to drill and drilled and completed a well for the production of natural gas in said section, said well being completed, equipped and ready for production on April 28, 1944 (R. 420).

Republic is the owner of various gas wells, surrounding the section in which the Peerless Well has been drilled, from which Republic has been for a considerable period of time, prior to the completion of said Peerless well, producing natural gas, thereby draining natural gas from underneath said Section 14 in which the well of Peerless has been drilled, and that such drainage has been continuous, from the date of the completion of each of the Republic wells, both before and after the completion of said Peerless well (R. 420-421).

The wells of Republic and the well of Peerless are drilled into the same common source of supply and reservoir of natural gas.

The production of natural gas in the field is in excess of the market demand.

Republic was at the time of the hearing and had theretofore been engaged in transporting natural gas for compensation, hire and otherwise.

Republic was at the time of the hearing and had been at all times involved, engaged in the business of buying, and selling of natural gas in the Hugoton, Oklahoma Gas Field, and is a common purchaser within the meaning of the statutes of the State of Oklahoma defining common purchaser (R. 422).

Republic uses the highways of the State of Oklahoma for the purpose of laying natural gas pipe lines for the purpose of transporting natural gas.

Republic at all times involved has been engaged in the taking of natural gas from the gas field involved, and in transporting the same and delivering the same for sale within and without the State of Oklahoma.

One of the pipe lines of Republic crosses Section 14 in which the well of Peerless has been drilled (R. 422-423).

Republic qualified to do business in the State of Oklahoma on the 5th day of October, 1938, and accepted and agreed to comply with the laws of the State of Oklahoma governing its operations, with full knowledge of the laws of the State of Oklahoma with reference to ratable taking of natural gas (R. 423, 424).

The operations of Republic constitute it a transporter of natural gas.

Its operations constitute it a common carrier of natural gas.

Its operations constitute it a common purchaser of natural gas.

Even though Republic is not a common carrier or a common purchaser Republic has been engaged in taking natural gas from the natural gas field involved, for purposes other than the development of gas or oil fields, or operating oil wells, or for purpose of its own domestic use, and in doing so has been taking more than its proportionate share of gas from the natural gas field, and draining natural gas from underneath the Peerless well and is thereby preventing Peerless from taking its proportionate share of the natural gas from said natural gas field (R. 425, 426).

Peerless has made a proper tender to Republic of the natural gas producible from its said well but Republic has refused to take gas ratably from said well.

Republic should be required to take natural gas ratably from the Peerless well for the following reasons, any one of which is sufficient:

(a) Republic is a common purchaser of natural gas;

(b) Republic is a common carrier of natural gas;

(c) Republic is a transporter of natural gas;

(d) Republic is taking and will continue to take more than its proportionate part of the natural gas in said field unless required to take ratably from said well of Peerless;

(e) Republic is draining natural gas from underneath said Section 14 in which said Peerless well has been drilled; and will continue to drain gas from underneath said Section 14 until all the gas thereunder has been drained and Peerless thereby prevented from taking its proportionate share of natural gas in the field unless Republic is required to take ratably from said well, and Republic should be required, in order to prevent waste, protect correlative rights, and prevent unreasonable drainage from the reserves of others, to take ratably from said well. That the draining of natural gas from underneath Section 14 by Republic is the taking of property without compensation, without its consent, and in direct violation of Sections 23 and 24, Article 2 of the Constitution of Oklahoma and the Fifth Amendment to the Constitution of the United States, and without due process of law, in violation of the Constitution of Oklahoma and of the Fifth and Fourteenth Amendments to the Constitution of the United States of America. (R. 426).

The order of the Commission based on the preceding findings is short and is set out in full:

> "It Is Therefore Ordered by the Corporation Commission of the State of Oklahoma as follows:
>
> "1. That the respondent, Republic Natural Gas Company, be, and it is hereby, required to take gas ratably from applicant's well known as Peerless Oil and Gas Company Crump No. 1 well, located in the

Southwest Quarter (SW¼) of Section 14, Township 6 North, Range 15 East C.M., in Texas County, Oklahoma, in the Hugoton Oklahoma Gas Field, and to make necessary connection as soon as applicant lays a line connecting said well with respondent's line, and to continue to do so until the further order of this Commission; provided that, applicant shall lay its line from its well to the lines of respondent at some point designated by the respondent, but in said Section 14 in which said well of Peerless Oil and Gas Company has been drilled; and said respondent is required to make said designation immediately and without unreasonable delay, and in event of failure of respondent so to do, respondent shall no longer be permitted to produce any of its wells located in the Hugoton Oklahoma Gas Field.

"2. The terms and conditions of such taking of natural gas by Republic Natural Gas Company from said Peerless Oil and Gas Company's well shall be determined and agreed upon by and between applicant and respondent; and in the event said parties are unable to agree, applicant and respondent are hereby granted the right to make further application to the Commission for an order fixing such terms and conditions; and the Commission retains jurisdiction hereof for said purpose.

"Done and performed by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 10th day of January, 1945." (R. 427-428)

THE EVIDENCE

The natural gas well of Peerless and the natural gas wells of Republic are located in the Hugoton Oklahoma Gas Field (R. 83). This field is one of the largest gas fields in the State of Oklahoma (R. 55), having total reserves of approximately nine trillion cubic feet of natural gas; said

field extends from the Kansas line on the North, through Texas County, Oklahoma, to the Texas line on the South, and approximately 40 miles east and west; said field extends north into the State of Kansas and at least a short distance south into the State of Texas (R. 56, 57).

Republic has 92 producing gas wells in said field, 38 are in Oklahoma, which said wells are drilled into the same common source of supply as that into which the Peerless well involved herein has been drilled (R. 164, 165, 205, 206).

Republic has sold a part of the natural gas produced by it to Southwestern Public Service Company, formerly Cimarron Utilities Company, for distribution and sale to the public in sixteen towns in Oklahoma (Bobo, R. 69, 70, 71).

Republis sells a part of the natural gas which it produces to Northern Natural Gas Company for distribution and sale to the public (Ex. 32, 15, 49, R. 274, 305, 294; Hurlburt, R. 168, 169, 170).

Republic also sells and delivers part of the natural gas produced by it to Cities Service Gas Company in the State of Oklahoma under the contract of dedication for period of twenty years for sale and distribution by Cities Service Gas Company to the public (Hurlburt, R. 204; Ex. 50, 51 and 49; R. 297, 226, 294).

Republic has transported natural gas for others as follows:

(a) It has transported natural gas for Cities Service Gas Company (Hurlburt, 183, 184, 185, 186; Ex. 16, R. 287-8, and Ex. 43, R. 287-8).

(b) In consideration of permission granted it by the P.A.W. to use critical materials in the drilling of eight

wells, Republic connected with wells belonging to Pioneer Petroleum Company and Benedum Trees Oil Company, and transported natural gas from said wells for resale. Republic connected to said wells at its own cost and transported the natural gas to market without any charge except the right to use critical materials (Hurlburt, R. 186-7, 188; Ex. 25 to 42 inc., R. 267-284 inc.; Ex. 45 and 46, R. 289, 290).

Republic at the time of the hearing was selling natural gas which it had transported, to Northern Natural at the rate of six cents per thousand cubic feet and paid its royalty owners five cents per thousand cubic feet. This difference in the amount received by Republic and that paid to the royalty owners was a charge or consideration for transporting of the natural gas through the pipe lines of Republic to the purchaser, and Republic profited by said transaction to the extent of one cent per thousand cubic feet of natural gas so transported (Hurlburt, R. 149, 150, 151, 152, 157, 158; R. 460).

Republic sells natural gas to domestic consumers on the right of ways (Hurlburt, R. 172).

Republic has laid some of its pipe lines on public highways and has made application to and obtained permission from the Board of County Commissioners of Texas County, Oklahoma, to lay a pipe line on the highways (Hurlburt, R. 199, 200; Ex. 19, 20, R. 200, 202).

The Gas Purchase Contract with Northern Natural was first entered into with the predecessor of Republic on May 27, 1930; Amendatory and Supplemental Agreements were dated July 1, 1932 (R. 326) and April 5, 1937 (R. 352, 367; Ex. 15, R. 305).

Republic was incorporated on November 24, 1934, and its Articles were thereafter amended on the following dates:

June 25, 1935, October 29, 1937, March 21, 1939, October 22, 1943 (Ex. 23, R. 373).

Republic qualified to do business in the State of Oklahoma on the 5th of October, 1938 (R. 424).

Republic entered into a contract for sale of excess gas to Northern Natural Gas Company, November 25, 1946 (Ex. 49, R. 294).

Republic entered into a gas purchase contract with Cities Service Gas Company on July 19, 1943 (Ex. 50, R. 297). A memorandum agreement with Cities Service Gas Company was entered into July 22, 1943 (Ex. 51, R. 226) and Supplementary Agreement dated April 26, 1944 (Ex. 44, R. 288).

Republic has a pipe line, a part of which is located in the Hugoton Oklahoma Gas Field in Texas County and which crosses Section 14 in which the well of Peerless involved herein has been drilled, which said pipe line is used for transporting natural gas for domestic consumption along the right of way, to Northern Natural for distribution to the public for delivery and sale, to Cities Service Gas Company in Oklahoma for distribution to its consumers in Oklahoma and other states and to Southwestern Public Service Company, formerly Cimarron Utilities Company, for distribution to its customers in sixteen towns or cities in the State of Oklahoma (Ellison, R. 83-84-5; Hurlburt, R. 165-172 inc.; Bobo, 69-71 inc.; Ex. 9, 14, 15, 50, 51 and 49, R. 296A, 304A, 305, 297, 226, 294).

There was an understanding, between Republic and the representatives of the Commission before Republic entered the State of Oklahoma, that there was at ratable taking law in the State of Oklahoma (R. 208).

H. L. WILBURN, a witness on behalf of applicant, testified that he had charge of the drilling in of Peerless Crump

#1 Well; that the virgin pressure of the field was 435 to 438 pounds; that said well was completed and ready for production on April 28, 1944; that the normal, stabilized gas pressure of said well was 399.4 pounds (R. 72 to 78 inc.).

KENNETH ELLISON, a witness on behalf of applicant, testified as to his education and experience; he identified as Exhibit 9, a map reflecting fifteen sections of land in Texas County, which includes Section 14 in which the Peerless Well, Crump #1, had been drilled, and other sections in which wells belonging to Republic had been drilled. The map reflects that Republic's pipe line, which was originally an 8-inch pipe and which recently had been changed to a 12-inch pipe, crosses said Section 14. The map is comprised of fifteen sections of land in which area there has been drilled and completed nine producing gas wells; eight of the wells being owned and operated by Republic, and one of the wells being owned by Peerless (R. 83-84 inc.).

He further testified that the virgin pressure of the field was 440 pounds; that the field would produce within a pressure range of 440 to 40 pounds; that reduction of gas pressure shown on the map with reference to various Republic wells indicates that gas has been withdrawn and that the volume left in the reservoir has been decreased (R. 85, 86).

The decline in pressure indicates that the common reservoir is being depleted of its gas; that the reduction in pressure of Republic's wells shown on the map amounts to 40 pounds, or 10 per cent of the original virgin pressure; that the virgin pressure of the structure underlying said Section 14 in which Peerless Crump #1 Well has been drilled, was 440 pounds, and that the pressure of gas producing formations underlying Section 14 has been reduced by operation of the Republic wells, which shows that gas

has been withdrawn from underneath said Section 14 (R. 86, 87, 88, 94).

The Republic wells shown on his map (Ex. 9, R. 296A), have since their completion been draining natural gas from underneath Section 14. The wells closest to the Peerless well being the ones which profited most by withdrawals of natural gas and are the wells responsible for reduction of pressure of approximately 40 pounds in the Peerless well. The eight Republic wells offsetting and near-by the Peerless well have been draining gas from underneath Section 14, in which the Peerless well has been drilled, to the extent that they have reduced the pressure 40 pounds (R. 92). From a study of the available information and using initial rock pressure of 440 pounds and abandonment pressure of 40 pounds, the ultimate recovery of gas underneath Section 14 from beginning to abandonment conditions would be eight billion, two hundred fifty million cubic feet of gas (R. 93). To the date of trial there had been drained, from underneath Section 14, eight hundred twenty-five million cubic feet of gas, none of which had been produced through the Peerless well, but had been produced by other wells drilled into the same common source of supply. The major portion of the gas from underneath said Section 14 has been produced by the near-by Republic wells (R. 93-4-5).

The withdrawals of natural gas from underneath said Section 14 represents 10 per cent of the total recoverable gas (R. 95). The value of the gas so withdrawn under current prices is approximately $49,500.00 (R. 96).

Assuming that the Peerless well is unconnected, the drainage will continue in the future as in the past. The only way to stop drainage would be to shut in all of the wells or to connect the Peerless well (R. 49-50). Eventually the rock pressure in the formation into which the Peerless well has been drilled will be reduced to approximately 40 pounds,

the gas underlying Section 14 will have gone out to other wells and Peerless will have received no benefits from the gas underlying said Section 14 (R. 96, 97).

The Republic wells involved herein and the Peerless well are drilled into and completed in the same common source of supply of natural gas (R. 97, 98).

THOMAS D. BAILEY, being sworn as a witness, testified on behalf of applicant as follows: He is employed by the Corporation Commission as Petroleum Engineer in the Oil and Gas Conservation Department; as to his education and qualifications; and that the virgin pressure of the Hugoton Field was 440 pounds (R. 50, 51).

There was originally approximately eight billion, seven hundred twenty millions cubic feet of gas, or thirteen million six hundred thirty thousand cubic feet of gas per acre, underlying Section 14 into which the well of Peerless has been drilled.

There has been drained to date from underneath said section one billion seven million cubic feet of gas, the drainage to date figured at 5 cents per thousand cubic feet, would be $53,500.00. The average annual pressure drop on the wells in the area is approximately 5½ pounds per well. Assuming the same reduction in Section 14 during the period from June 1 (the approximate date of the completion of the Peerless well) to October 1, 1944, the pressure drop was 1.8 pounds per square inch, or .598 pounds of the gas in place, the value of which would be approximately $2,390.00, or on a daily basis of $19.60 per day. If such drainage were to continue and the well of Peerless remain unconnected, all recoverable gas would be drained from underneath Section 14 and Peerless would have obtained no advantage therefrom. The Republic wells have been draining natural gas from underneath Section 14 since the date of the comple-

tion of the Peerless well therein and will continue in the future (R. 118, 119, 120, 122).

ELMER CAPSHAW being sworn as a witness testified for both Peerless and Republic, as follows: The witness testified as to his education, qualifications and experience. The virgin pressure of the field was 441 pounds (R. 138).

Gas has been drained from underneath said Section 14 since the first well drilled by Republic has been completed, and the production of the wells belonging to Republic has caused drainage from underneath said Section 14; such drainage will continue in the future if the Republic wells continue to produce as in the past, and if the Peerless well is not connected all natural gas will be withdrawn from underneath said Section 14. The Republic wells are the immediate cause of the difficulty (R. 139, 140).

The Corporation Commission of the State of Oklahoma has made various basic proration and ratable taking orders covering the entire field. The first of which was Order No. 16377 in Cause CD-817. (R. 55). Republic was a party to the proceedings in which said order was entered and Hurlburt, Vice-President, testified in said hearing (R. 148).

Said order recognized and applied the ratable taking laws of 1913, as well as the laws of 1915. The order is, in part, as follows:

> "14. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas, prohibiting the waste thereof, and providing that the Corporation Commission shall give due regard to the acreage drained by each well in prorating gas production so as to prevent any securing of an unfair proportion of the gas from the formation, and authorizing and directing the Corporation Commis-

sion to promulgate rules and regulations for the determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide for ratable taking, and protect the interests of the public and all those having a right to produce therefrom, and to give to each owner or lessee an opportunity to produce all of the natural gas located in its original state under the property owned by him, and to enforce the laws; * * *"

Said order also contains the following findings:

"9. That pressure differentials exist to some extent between the wells and leases in said field, which shows that there is some migration of gas, and that unless action is taken by this Commission these differentials will increase and considerable inequities will be caused by drainage, and waste may result. It is a matter of common knowledge that gas in a formation migrates toward the wells that are on production and that drainage thus caused, which is not equalized by counter-drainage from different properties, results in disproportionate production by the wells on the respective properties.

"17. That in order to carry out the laws of the State of Oklahoma and to perform the duties and obligations placed upon the Corporation Commission, it is necessary to amend the general rules and regulations insofar as they affect the Hugoton Field and to adopt and promulgate additional rules and regulations for the production of gas from said field in order to prevent waste, insure ratable taking, protect the interest of the public and all parties interested therein, to prevent any lessee from securing any unfair proportion of the gas in said field, and to give to each lessee and royalty owner an opportunity to recover the gas originally underlying the surface of the land owned by him.

"18. That in order to accomplish as nearly as possible the object set out in the preceding para-

graph, it is necessary to adopt a formula that will enable each well to currently produce its ratable share of the gas and to ultimately produce the approximate amount originally underlying said lease."

Republic was a party to said order, no appeal was taken therefrom and the same became final.

The Commission also entered Order No 17359 in Cause CD-914 (R. 448). Republic appeared in said proceedings. No appeal was taken therefrom and said order became final. Said order contains the following provision:

"3. In the manufacture of said carbon black applicant shall be required to purchase all the natural gas produced and offered for sale in the vicinity of said plant, or which may be reasonably reached by pipe lines, or other systems in the vicinity of said plant, without discrimination in favor of one producer or person as against another; and if applicant is unable to purchase all of said gas so produced and offered for sale, it shall purchase said natural gas from each person or producer ratably on such ratable basis as shall be established by this Commission or by the laws of the State of Oklahoma."

Pursuant to said order Republic made a tender to Cabot Carbon Company of natural gas to be produced by Republic (R. 447).

After the hearing and before the order, involved herein, was entered and filed herein the Commission issued its Order No. 17410 in Cause CD-861, of which order the Supreme Court of the State of Oklahoma took judicial notice, said order being a part of the record in said court but for some reason is not a part of the record herein. Said order contains the following findings:

"9. That pressure differentials exist to some extent between the wells and leases in said field, which appears to be due primarily to the fact that some

wells have been produced for a longer period and have produced more gas than others, which shows that there is some migration of gas from some leases to others, and unless action is taken by the Commission the differentials will increase and cause inequities due to drainage, and waste will result. It is of common knowledge that gas in a formation migrates toward the wells that are on production and have the lowest pressure, and that drainage thus caused, which is not equalized by counterdrainage from other properties, results in disproportionate production by the wells on the respective properties.

"11. That the full production of gas from wells in said field is greatly in excess of the market demand and of the transportation and marketing facilities.

"12. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas and prohibiting the waste thereof, and authorizing and directing the Corporation Commission to promulgate rules and regulations for determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide ratable taking, and protect the interests of the public and all those having a right to produce therefrom; and the Commission was therein authorized and directed to give due regard to the acreage drained by each well in determining the amount of gas that should be produced from any common source of supply and fixing well allowables; such rules and regulations to give to each owner or lessee an opportunity to produce as nearly as possible all of the natural gas located in its original state under the property owned by him, and permit him to produce it ratably with other persons having an interest there in and wells located thereon; that in the years 1933 and 1935 the legislature enacted additional statutes which pertain principally to oil production, but in general providing that pro-

duction of oil and gas in such manner as to constitute waste is prohibted, and authorizing and directing the Corporation Commission to make and promulgate rules and regulations for the prevention of such waste.

* * *

"16. That it appears that one well in said field will adequately drain 640 acres without waste; that all wells heretofore drilled have been in one section as laid out by the governmental survey, and there is no such section that has more than one well, but the acreage communitized for the drilling of such wells has not been in all instances all within one section, nor are the wells heretofore drilled all located in the approximate center of a section; that since the promulgation of Order No. 16377 all wells have been drilled on communitized leases entirely within one section according to the governmental survey, with the well in the approximate center thereof; that except as otherwise specifically provided all units should contain not to exceed 640 acres all within one section as determined by the United States Governmental Survey and each well should be located as nearly as practicable in the center of a unit, unless otherwise specifically ordered by the Commission; that the acreage factor for the purposes of the allocation formula should be not to exceed 640 acres all within one governmental section with the well in the approximate center thereof unless otherwise specifically ordered by the Commission.

* * *

"20. That in determining allocations in said field, only developed acreage should be considered; and developed acreage shall mean the acreage within a unit on which there is a producing well with the market outlet, or the owner of which is ready, willing, and able to make a pipeline connection or deliver his gas to other market at the going price for gas in the field."

The order contained the following provision:

> "8. All purchasers, takers, and producers of gas in the Hugoton Field shall comply with the common purchaser and ratable taking provisions of the Oklahoma statutes, by purchasing, producing, and taking all of the gas without discrimination in favor of one producer as against another; and they shall not discriminate in favor of their own production, whether in price or amount, and producers and takers shall take from all wells which they can reach by their own line or by lines provided by the well owners ratably in accordance with the allocations to wells established by this order."

No appeal was taken and the order became final.

ARGUMENT AND AUTHORITIES

PROPOSITION 1:

Republic has sought and obtained the benefits of the Statutes involved and is estopped to deny their validity.

Republic qualified to do business in the State of Oklahoma long after the statutes involved had been enacted, with full knowledge of said statutes.

It is presumed to have accepted the same as required by their provisions. *Oklahoma Natural Gas Corporation* v. *State,* 161 Okla. 104, 17 P. (2d) 488, 492.

Republic, qualified to do business in the State and accepted the laws of the state, constructed its pipe lines within the state, produced and transported natural gas therein, participated in hearings in which the Commission entered orders construing the statutes involved and has taken affirmative action to secure the benefits of said statutes as applied by the orders of the Commission. Republic made a tender of its natural gas to Cabot Carbon Company

under and pursuant to the orders of the Commission (Order No. 17359; R. 448; Tender of Republic, R. 447). It made application for and obtained permits to use the highways of the State for laying its pipe lines (R. 200-2). Thus Republic sought the benefits, of the statutes involved, in the same manner as Peerless now seeks the same or similar advantages. Republic is therefore estopped to deny the validity of the acts involved.

In the case of *Booth Fisheries* v. *Industrial Commission*, 271 U. S. 208, the court said:

> "More than this, the employer in this case having elected to accept the provisions of the law, and such benefits and immunities as it gives, may not escape its burdens by asserting that it is unconstitutional. The election is a waiver and estops such complaint. Daniels v. Tearney, 102 U. S. 415; Grand Rapids & I. R. Co. v. Osborn, 193 U. S. 17."

In the case of *Wall, et al.* v. *Parrot Silver & Copper Company, et al.*, 244 U. S. 407, the court said:

> "They cannot claim the benefit of statutes and afterwards successfully assert their invalidity."

See also, *The Pipe Line Cases*, 234 U. S. 541, and *Pierce Oil Corporation* v. *Phoenix Refining Co.*, 259 U. S. 125.

This identical question was raised in the case of *Thompson, et al.* v. *Consolidated Gas Utilities Corp, et al.*, 300 U. S. 55, the case upon which Republic places its principal reliance herein. Although this court in that case held no affirmative steps had been taken to obtain whatever benefits might accrue and, therefore there was no estoppel, it recognized the rule of law stated in the other cases cited above. In the body of the opinion, this court said:

> "Moreover, plaintiffs do not assert rights under the statute which they assail. They have not taken,

and are not obliged to take, and affirmative steps thereunder to obtain whatever benefits may accrue to them because of the restrictions imposed on production for inferior uses. Compare Daniels v. Tearney, 102 U. S. 415, 421; Wall v. Parrot Silver & Copper Co., 244 U. S. 407, 411; Booth Fisheries Co. v. Industrial Commission, 271 U. S. 208, 211."

In the case of *John H. Fahey, et al.* v. *Paul Mallonee, et al.*, 67 S. Ct. Rep. 1552, this Court had under consideration a similar proposition when it said:

"This is a stockholder's derivative action in which plaintiffs sue only in the right of the Association. It is an elementary rule of constitutional law that one may not 'retain the benefits of the Act while attacking the constitutionality of one of its important conditions.' *United States v. San Francisco*, 310 U. S. 16, 29. As formulated by Mr. Justice Brandeis, concurring in *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 348, 'The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.'

* * *

"It would be difficult to imagine a more appropriate situation in which to apply the doctrine that *one who utilizes an Act to gain advantages of corporate existence is estopped from questioning the validity of its vital conditions.* We hold that plaintiffs are estopped, as the Association would be, from challenging the provisions of the Act which authorize the Board to prescribe the terms and conditions upon which a conservator may be named." (Emphasis supplied)

Republic contends that the order of the Commission is in effect a legislative enactment made subsequent to the time that Republic entered the State of Oklahoma, and that Republic was therefore not bound by such an interpreta-

tion as to the time it entered the State, acquired its property, made its contracts and began the production and transportation of natural gas. We think this an untenable contention. The Supreme Court of Oklahoma has held that the provisions of Chapter 198, S. L. 1913 are plain and unambiguous, and that the order of the Commission was merely an application of the plain and unambiguous provisions of the statute to the particular situation. If we take the statute and insert at the proper points the names of the parties involved in this litigation, we can arrive at no other conclusion than that the order of the Commission involved herein is but a restatement of the language of the statute itself. To illustrate our point we quote Section 3 of said Act, inserting the names of the parties herein where indicated, with the following result:

> "Any person, firm or corporation (Republic), taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner (Peerless) of the gas in proportion to his (Peerless) interest in gas, upon such terms as may be agreed upon between said owners (Peerless) and the party taking such (Republic), or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner (Peerless) shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas. (Laws 1913, ch. 198, p. 440, par. 3.)"

In view of the plain, unmistakable and unambiguous language of the statute no subsequent order of the Commission was necessary to inform and bring home to Republic and its astute counsel the full purpose and tenor of this Act. Truly, in the words of this court in the case of *Pierce*

Oil Corporation v. *Phoenix, supra,* Republic was "plainly within the scope of the statute in effect when it entered the state."

We see nothing in the case of *Nowata County Gas Co.* v. *Henry Oil Co.*, 269 F. 742, to the contrary. In its opinion the court said:

> "The fourth defense urged by the defendant is based upon what is known as the common purchaser statute of the state of Oklahoma. Neither the statute nor any facts to which the statute might apply are pleaded in the answer of the defendant as a defense to the plaintiff's cause of action. The defense, therefore, is not within any issue in the case under the pleadings. Buchtel v. Evans, 21 Or. 309, 28 Pac. 67; Maitland v. Zanga, 14 Wash. 92, 44 Pac. 117; 13 C.J. § 891, note 79."

In its opinion the court in that case quoted with approval from *Munn* v. *Illinois*, 94 U. S. 113, as follows:

> " 'Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. *When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control'.*" (Emphasis supplied)

In its analysis of *Pierce* v. *Phoenix, supra,* Republic comments upon the fact that the operations involved were purely intrastate which fact distinguishes said case from the case at bar. Insofar as the effect of the order involved herein is concerned, the operations involved are wholly intrastate. There is nothing in the record which indicates that the Commission's order need affect or be a burden on interstate commerce (Opinion of the court, R. 463). As a

matter of fact, since the hearing before the Commission Republic has ceased making deliveries of gas produced in Oklahoma to Northern Natural Gas Company, and its deliveries are now made entirely within the State of Oklahoma.

The statute and order involved are within the proper powers of the state. *Interstate Natural Gas Company* v. *Federal Power Commission*, 329 U. S. 802; *Panhandle Eastern Pipe Line Company* v. *The Public Service Commission of Indiana, et al.*, No. 69 October term, 1947, not yet officially reported.

PROPOSITION 2:

The enactment of legislation governing ownership of property and providing for the reciprocal rights and obligations with reference thereto is within the exclusive jurisdiction of the State.

The Supreme Court of the State of Oklahoma in affirming the order of the Commission involved herein rests its decision primarily upon Chap. 198, Session Laws, 1913 (Appendix D). That statute is an Act defining ownership of natural gas, providing for the reciprocal rights and obligations with reference to the taking of the same. It is a statute which deals primarily and exclusively with the ownership, of natural gas in the State of Oklahoma, by the owners of the fee title or by those who own or hold the right by virtue of a lease to produce the same. It deals only with the nature and extent of ownership of natural gas and the reciprocal rights and obligations of such owners in the production and taking of the same.

It prescribes a remedy in civil damages for its violation, makes such violations a felony and prescribes punishments therefor.

All of such provisions have to do with the ownership of an interest in real property and the reciprocal rights and obligations with reference thereto.

Peerless based its application upon its ownership of natural gas and rights therein under and by virtue of oil and gas leases. It was, within the purview of Chap. 198, Session Laws, 1915, an oil and gas lessee having the right to drill for gas. In the exercise of said right it had drilled a gas well to a producing reservoir or source of supply of natural gas, thereby reducing to possession its share of the gas therein (Sec. 2).

Republic also was the owner of oil and gas leases and had drilled wells into the same source of supply of natural gas and was taking natural gas from a gas field for purposes other than the development of a gas or oil field, operating oil wells and for the purpose of its own domestic use. It had drilled wells into the same common source of supply of natural gas and had the same rights with reference to producing natural gas as did Peerless. It was also subject to the obligations of said Act. (Sec. 3).

Republic was at all times involved draining natural gas belonging to Peerless from underneath Section 14 into which the well of Peerless had been drilled. It was taking natural gas therefrom in violation of said Act, which the Supreme Court of Oklahoma has said is plain and unambiguous. It was therefore obligated to take ratably from each owner of gas (Peerless) in proportion to his interest (the interest of Peerless) in such gas, upon such terms as might be agreed upon between the said parties, or if they cannot agree, at such price and upon such terms as may be fixed by the Corporation Commission after notice and hearing (Sec. 3).

Under the Oklahoma law an oil and gas lease conveys an interest in land and the owner of an oil and gas lease is the owner of an interest in land.

In *Barnes, et al.* v. *Keys, et al.*, 127 P. 261, the Supreme Court of Oklahoma said:

> "An oil lease, investing the lessee with the right to remove all the oil in place, in the premises, in consideration of his giving the lessors a certain per centum thereof, is in legal effect a sale of a portion of the land, and the proceeds represent the respective interests of the lessors in the premises."

To the same effect is *Rich* v. *Doneghey, et al.*, 177 P. 86.

In the case of *Franklin, et al.* v. *Margay Oil Corporation, et al.*, 153 P. (2d) 486, the Supreme Court of Oklahoma said:

> "In a long line of cases, this court has held that an oil and gas lease of the kind here involved vests in the lessee an interest in the land. Barnes v. Keys, 36 Okla. 6, 127 P. 261, 45 L. R. A., N. S., 178, Ann. Cas. 1915A, 515; Rich v. Doneghey, supra; Nicholson Corporation v. Ferguson, 114 Okla. 16, 243 P. 195; Cuff v. Koslosky, 165 Okla. 135, 25 P. (2d) 290, 292. In the latter case, it is said:
>
> " 'This court in the case of Brennan v. Hunter, 68 Okla. 112, 172 P. 49, 50, announced the following rule relative to oil and gas leases:
>
> " ' "The lessees thereby acquired a vested, though limited, estate in the lands for the purpose named in the lease; and are entitled to be protected in the exercise of their rights according to the terms and conditions of the contract. * * * The views above expressed are sustained by the great weight of authority, if not by the unanimous opinions of the courts". ' "

The property involved, therefore, under and by virtue of the leases of the parties, Peerless and Republic, constituted an interest in land.

In the case of *Lindsey* v. *McClure*, 136 F (2d) 65, the Tenth Circuit Court said:

> "However, a water right is a property right and inherent therein is the right to change the place of diversion, storage, or use of the water if the rights of other water users will not be injured thereby. * * *"

In the case of *Citizens State Bank of Barstow, Tex.*, v. *Vidal, Collector of Internal Revenue, et al.*, 114 F. (2d) 380 (10th C.C.A.) the court said:

> "'Property' is a word of very broad meaning and, when used without qualification, may reasonably be construed to include obligations, rights, and other intangibles, as well as physical things."

In the case of *Hoyd* v. *Citizens Bank of Albany Co.*, 89 F. (2d) 105 (6th C.C.A.) the court said:

> "The term 'property' is not defined in the enactment. It is unlimited by any qualifying phrase, and doubtless was used in its ordinary sense as interpreted in the various decisions of the federal and state courts. Property is a nomen generalissimum and extends to *every species of valuable right and interest, including real and personal property, easements, franchises, and other incorporeal hereditaments.* Lucas v. Schneider, 47 F. (2d) 1006 (C.C.A. 6).
>
> "Since the land is situated in Ohio, the Ohio statutes and decisions control." (Emphasis supplied)

In the case of *Wells Fargo & Co.* v. *Mayor, etc., of Jersey City*, 219 F. 699 (3 C.C.A.) the court said:

"Strictly, and as a matter of abstract reasoning, 'property' in a thing is different from the thing itself. It is a right to use, enjoy, and control, and therefore is neither visible nor tangible."

In the case of *Sunderland* v. *United States*, 266 U. S. 226, the Supreme Court of the United States said:

"The general rule is not to be doubted, that the tenure, transfer, *control* and disposition of real property are matters which rest exclusively with the State where the property lies, *United States* v. *Fox*, 94 U. S. 315, 320-321; * * *"

The rule that the ownership of property and rights and obligations with reference thereto are within the exclusive jurisdiction of the legislatures of the several States and subject to exclusive control and jurisdiction of the State, is well and thoroughly established.

See:

Frew, et al. v. *Bowers, Collector of Internal Revenue*, 12 F. (2d) 625 (2 C.C.A.);

Banque De France v. *Chase Nat. Bank of City of New York*, 60 F. (2d) 703 (2 C.C.A.);

Commissioner of Internal Revenue v. *Skaggs*, 122 F. (2d) 721 (5 C.C.A.);

O'Donnell, et al. v. *United States*, 91 F. (2d) 14 (9 C.C.A.);

Hammonds v. *Commissioner of Internal Revenue*, 106 F. (2d) 420 (10 C.C.A.).

In the case of *Commissioner of Internal Revenue* v. *Skaggs, supra*, the court said:

"But the Spanish and French laws touching community property, and those of California and Texas and other states derived from them, are held to be,

in the vocabulary of the civilians, statutes real and not statutes personal; that is to say, they apply to things within a country's jurisdiction rather than to persons wherever they may be or go. Hammonds v. Commissioner, 10 Cir., 106 F. (2d) 420. It should follow *that things, whether movable or immovable, actually situate in a State and effectively within its power, should be governed by the law of that State. It is universally held that real or immovable property is exclusively subject to the law of the country or State in which it is situated, and no interference with it by the law of any other sovereignty is permitted.* 11 Am. Jur., Conflict of Laws, § 30. And the question whether property is real or personal is to be solved by the law of the place where it is actually located. Id., § 29. *These rules apply to questions of the marital rights of spouses in property.* 11 Am. Jur., Conflict of Laws, Sects. 50, 85; Id., Community Property, §§ 10, 11. The Board in this case recognized that the California land was subject to California law only, and that the rents from it prior to accrual were a part of the land, but thought that after accrual the rents were mere choses in action having no actual situs and would take a fictional situs at the domicile of Skaggs for tax purposes, and thus fall under the Texas law and become the property of himself and wife. We think the reasoning too artificial and tenuous. The receipt of the rents, issues or profits of land constitutes its enjoyment. A deed or devise of the income from property gives a corresponding right in the property itself. Commissioner v. Terry, 5 Cir., 69 F. (2d) 969; Irwin v. Gavit, 268 U. S. 161. If the Texas community law can transfer to Skaggs' wife a half interest in the rents and profits of his land in California, it in effect gives her a half interest in the land for the period of the marriage. An immature crop, like unaccrued rent, is a part of the land; and it becomes personalty when gathered—just as rent past due does —no longer passing with the land as part of it; *but*

we think in neither case would the law of another State be effective to change the ownership of the crop on its gathering, or of the rent on its becoming due. In Robinson's Succession, 23 La. Ann. 174, the marital community of a Louisiana couple sought to have the husband's separate estate account for cotton raised on his separately owned farm in Mississippi. It was held the cotton was separate property. In the Hammonds case, supra, a wife whose earnings were her own at her domicile in Oklahoma, received for her services an interest in an oil lease in Texas, which she converted into money and an oil payment. The oil lease was realty in Texas, and what came out of it, cash and oil, was held governed for federal tax purposes by the Texas community law and not by the law of her domicile. The rent on this California land was certainly the property of Skaggs at the moment it became due. We do not think the Texas law, being a statute real, operates to change the ownership instantly afterwards." (Emphasis supplied)

In the case of *Banque de France* v. *Chase Nat. Bank of New York City, supra,* the court said:

"Where ownership is claimed to result from a contract entered into in one country relating to personal property situated in another, the law of the latter governs and must be proved as to the effect of the contract upon the title to the property. Direction Der Disconto-Gesellschaft v. U. S. Steel Corp., 267 U. S. 22; New York Trust Co. v. Island Oil & Transport Co., 33 F (2d) 104 (C.C.A. 2); In re Circle Trading Corp. 26 F. (2d) 193 (C.C.A. 2)."

In the very recent case of *Davies Warehouse Co.* v. *Bowles, Price Administrator,* 321 U. S. 144, this court in the opinion said:

"But in no case relied upon did we achieve uniformity at the cost of establishing overlapping

authority over the same subject matter in the state and in the Federal Government. When we do at times adopt for application of federal laws within a state a rule different from that used by a state in administering its laws, the two rules may subsist without conflict, each reigning in its own realm. *It is a much more serious thing to adopt a rule of construction, as we are asked to do here, which precludes the execution of state laws by state authority in a matter normally within state power. The great body of law in this country which controls acquisition, transmission, and transfer of property, and defines the rights of its owners in relation to the state or to private parties, is found in the statutes and decisions of the state.*" (Emphasis supplied)

Republic contends in its brief that the law of capture still obtains in the State of Oklahoma. The Oklahoma cases which so hold deal with and construe the law applicable to fields in which natural gas is produced in connection with the production of oil and are, therefore, clearly not applicable for the reason that in the instant case we have involved a natural gas field and the laws applicable thereto. The acts herein involved are each and all of them acts which relate to the ownership, production and transportation of natural gas produced in a natural gas field. The cases cited by Republic are, therefore, not applicable.

PROPOSITION 3:

Republic is a common purchaser and a common carrier of natural gas, and it is therefore required to take natural gas ratably from Peerless Oil and Gas Company.

Under the undisputed facts, Republic was not only engaged in the production of natural gas, but it was also engaged in transporting the same. The sole source of its in-

come consisted of profits derived from production and transportation of natural gas. Of the five cents per thousand cubic feet of natural gas received by it from the purchaser, Northern Natural Gas Company, one cent represented income derived from the transportation of such natural gas. Republic sold natural gas direct to consumers on its right-of-way. It sold natural gas to Southwest Public Service Company for distribution and sale to the public, in sixteen towns in Oklahoma, for light, heat and power. It sold a part of the natural gas produced by it to Northern Natural Gas Company for distribution and sale to the public. It sold a part of the natural gas produced by it to Cities Service Gas Company in the State of Oklahoma for distribution by Cities Service Gas Company to the public. It transported natural gas for Cities Service Gas Company, Pioneer Petroleum Company and Benedum Trees Oil Company in consideration of the right accorded to it to use critical materials in the drilling of additional wells. Based on the foregoing evidence of its operations within the State of Oklahoma the Corporation Commission in its order found that Republic was engaged in the business of buying and selling natural gas, and that it was engaged in the transportation of natural gas for compensation, hire and otherwise, and concluded as a matter of law that Republic was a common purchaser and a common carrier of natural gas, and therefore required to take gas ratably from Peerless.

Such findings of the Commission are prima facie, just, reasonable and correct. *Shaffer Oil & Refining Co.* v. *Creek County Gas Co., et al.*, 114 Okla. 258, 246 P. 630. *In Re. Application of Jackson, et al.*, 179 Okla. 577, 66 Pac. (2d) 1101.

If there be any evidence in the record reasonably tending to support said findings and conclusions, the same

should not be disturbed on appeal. In its brief Republic contends that the Supreme Court of Oklahoma held that Republic was not a common purchaser, or a common carrier, in that Republic had not held itself out as a common purchaser and a common carrier, and had not transported gas from any wells other than its own (Brief of Republic, page 10). The quotation as set forth is not a complete sentence and does not correctly and completely set forth the position taken by the Supreme Court of Oklahoma. Rather than holding that Republic was not a common purchaser or a common carrier of natural gas, the Supreme Court of Oklahoma found it unnecessary to pass on that question, stating:

> "Republic contends that the finding that it was a common purchaser of gas, and the finding that it was a common carrier are erroneous and not supported by the evidence, since the evidence does not show that it holds itself out as a common carrier or a common purchaser, or had ever offered to purchase gas from, or carry gas for any other person or the public generally.
>
> "We think it unnecessary to pass upon this contention since from the record it clearly appears that the finding of the Commission that 52 O. S. 1941, Sections 223 and 233, being Sections 2 and 3 of Chap. 198 of S. L. 1913, are applicable to the situation here involved, is fully sustained by the undisputed evidence, and we are of the opinion that by said sections the Commission was empowered to require Republic to take ratably from the Peerless well."

Republic cites one case in support of its contention that to constitute one a common carrier there must be a holding out to the public generally. *Michigan Public Utilities Co.* v. *Duke*, 266 U. S. 570, 576. That case dealt with

motor carriers rather than with pipe lines engaged in the transportation of natural gas, and the opinion of the court, in stating the nature of carrier's operations, clearly distinguished the situation therein involved from that in the instant case. The Supreme Court in that case, referring to the carrier, said: (a) his sole business is interstate commerce; (b) he has no power of eminent domain or franchise under the state, *and no greater right to use the highways than any other member of the body politic,* (c) he does not devote his property to any public use, (d) he has done nothing to give rise to the duty to carry for others, (e) the public is not dependent on him, or the use of his property for a service, and has no right to call on him for transportation.

Irrespective of whether or not the findings of the Commission are supported by the evidence, Republic has made no proper attack on said findings of the Commission. It has no where in its assignments of error (R. Page 474) or in its statement of points to be relied upon (R. Page 478) contended, or assigned as error, that the findings of the Commission are unsupported by the evidence. The findings of the Commission were not overthrown by the Supreme Court of the State, the same are not here under attack and must therefore stand. Since Republic admits that, if it is a common purchaser or a common carrier, the order is proper and since the findings of the Commission in that respect must stand; the order of the Commission should not be stricken down and this appeal should be dismissed. *Seabord Airline Ry* v. *Watson,* 287 U. S. 86, *Patterson, et al.* v. *Stanolind Oil & Gas Co., et al.,* 305 U. S. 376.

Chapter 99 S. L. 1913 (Appendix C) (Now carried as Sections 21 to 35 of Title 52 O. S. 1914) provides that

every person, joint stock company, limited co-partnership, partnership or other person now or hereafter exercising or claiming the right to carry or transport natural gas by or through pipe line or lines for hire, compensation or otherwise, or now or hereafter exercising or claiming the right to engage in the business of producing, piping or transporting natural gas shall not have or possess the right to conduct or engage in said business or operations, or have or possess the right to locate, maintain or operate the necessary pipe line, fixtures, etc., or use the highways, or any part thereof, or have or possess any right or rights concerning said business or operation, in whole or in part, except as authorized and subject to the provisions of said act. Said act further provides that any corporation, joint stock company, limited co-partnership, partnership or other person now or hereafter claiming or exercising the right to carry or transport natural gas by pipe line or pipe lines for hire, compensation or otherwise shall be a common purchaser of natural gas.

Under the admitted facts in this case, Republic does not come within the exception contained in Chap. 99, S. L. 1913, which is as follows: "All persons, firms, associations and corporations are exempt from the provisions of this act except from the provisions of Section 9 hereof, where the nature and extent of their business is such that the public needs no use in the same, and the conduct of the same is not a matter of public consequence, * * *"

Republic does not come within the foregoing exception, but is expressly excluded therefrom by the enactment by the same Legislature of Chap. 93 S. L. 1931. (Appendix F), which provides that the term "public utility" shall be taken to mean and include every corporation, association, company, individual, their trustees, lessees, receivers, successors or assigns, that now or hereafter may own, operate

or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public, for the conveyance of gas by pipe line, or for the production, transmission, delivery or furnishing of heat or light with gas.

The Supreme Court of Oklahoma has on numerous occasions construed the last cited statute, and each time has construed the same in such manner as to make it applicable to and governing the operations of Republic. In *Southern Oklahoma Power Company* v. *Corporation Commission, et al.*, 96 Okla. 53, 220 Pac. 370, the Supreme Court of Oklahoma said:

> "The plaintiff in error *contends that the Southern Oklahoma Power Company does not hold itself out to the public as furnishing power or electricity; that it simply furnishes electricity to one public utility under private contract;* that this is simply a case of a private corporation furnishing a public utility with a commodity which the latter in turn distributes for public use; and that the element is lacking which would determine that it is a public utility, viz., the impression of its service with a public use.
>
> "It is our opinion that the statutory definition of a public utility is sufficiently broad to include a plant operated as the plant of the plaintiff in error, where it generates electricity and furnishes same under a contract to a public utility for distribution to the public. This corporation operates a plant which furnishes and supplies a commodity (electric energy) to be furnished to the public for the production of electric current for light, heat, and power. The statute does not require that the corporation furnish the commodity to the public, but, if it furnishes a commodity for the purpose of that commodity being delivered to the public

> for the production of light, heat, or power, it comes within the statutory definition. It is our opinion that the statute impresses the service rendered by this corporation with a public use."

The Supreme Court of Oklahoma has made the same application of the same statute as to companies which produce natural gas for light, heat and power. *Oklahoma Natural Gas Co.* v. *Corporation Commission, et al.*, 90 Okla. 84, 216 Pac. 917, *Carey, Receiver* v. *Corporation Commission*, 168 Okla. 487, 33 Pac. (2d) 788.

In the case *In re. Assessment of Champlin Refining Co.*, 129 Okla. 166, 264 Pac. 160, the company was engaged in the transportation of oil rather than the transportation of natural gas, but the facts therein involved and the contentions made by the company are practically identical with the issues involved and the contentions made herein. In that case the company contended that the operation of its pipe lines in gathering and transporting crude oil was incident to, and a part of its refining business conducted at Enid, with the exception of four certain private contracts with purchasers, whereunder crude oil was transported to its storage tanks with the option of purchase.

In passing upon the contentions there made, the Supreme Court of Oklahoma said:

> *"Substantially, in principle, the same contentions were made and determined adversely in Pierce Oil Corporation* v. *Phoenix Ref. Co.*, 79 Okla. 36, 190 Pac. 857, affirmed in 259 U. S. 125, 42 Sup. Ct. 440, 66 L. Ed. 855. That case involved the question of regulation of the Pierce Oil Corporation by the State Corporation Commission as a common carrier by virtue of having operated its pipe lines for the transportation of crude oil for hire. In our view, that case foreclosed controversy upon the proposition that a private corporation may, by the conduct

> of its business, resolve itself into a public service corporation as defined by law, and thus become subject to regulatory control by the proper agency of the state. In the case at bar the moment complainant engaged in the transportation of crude oil for hire, if it was not prior thereto in law, a public service corporation, it was then and there by the law of the state declared to be a common carrier. Section 7944 C. O. S. 1921. In that event it must follow that the property of the corporation is rendered subject to assessment for purposes of taxation as public service corporation property by the State Board of Equalization, as was done, unless the decree of the district court of Garfield county effectually exempted complainant." (Emphasis supplied)

Republic produces natural gas. It transports and sells the same to public service companies within the State of Oklahoma for distribution to the public for light, power and heat. It is therefore a public utility, and is not exempt from the common purchaser and common carrier statutes of the State of Oklahoma. Its operations are subject to regulation by the State of Oklahoma. *Panhandle Eastern Pipe Line Co.* v. *The Public Service Commission of Indiana, et al.*, No. 69, October Term, 1947, Supreme Court of the United States.

Entirely aside from Chap. 93 S. L. 1913, or any other legislative enactment, there is ample authority to the effect that the production of oil and/or gas is imposed with a public interest or use. See *Russell, et al.* v. *Walker*, 160 Okla. 145, 15 Pac. (2d) 114; *Champlin Refining Co.* v. *Corporation Commission, et al.*, 286 U. S. 210; *Gulf Land Co., et al.* v. *Atlantic Refining Co., et al.*, 131 S.W. (2d) 73.

Republic cites the case of *Garkane Power Co.* v. *Public Service Commission*, 98 Utah 466, 100 P. (2d) 571, as

authority for the contention that Republic is not a common carrier or utility. However, in the body of the opinion of that case we find the following:

> "The Public Service Commission of West Virginia, a body of equal dignity with our Utah Public Service Commission, in considering an application for exemption from its jurisdiction, held, In Re Harrison Rural Electrification Asso., Inc., 44 P. U. R., N.S., 7, that a cooperative power association in all essential respects like Garkane was 'a public utility within the purview of the state's statute'."

In 13 C. J. S. at page 31 we find the following:

> "If the transportation is a part of an undertaking on the part of the carrier, for which there is a valid consideration, it will be a carriage for hire, although it is agreed that, in connection with the general advantage resulting to the carrier from the entire transaction, this particular part of the service is to be rendered without charge."

This statement of the law is exactly applicable (1) to the profit derived by Republic from the transportation of natural gas which it produces—and delivers to Northern Natural Gas Company, in that one cent per thousand cubic foot of gas paid by Northern Natural to Republic was for such transportation, and (2) to the transportation, by Republic of natural gas for Cities Service, Pioneer Petroleum Company and Benedum Trees, in that although Republic purportedly made no charge for its transportation of such gas there was a very valuable consideration realized by Republic in connection with the entire transaction in that Republic was permitted to use critical materials in the drilling of additional wells.

We therefore respectfully conclude (1) that since there has been no proper attack made on the findings of

the Commission, the same must stand, and the conclusions and order of the Commission based thereon must stand, and (2) that Republic is a utility, a common purchaser and a common carrier, and therefore subject to regulation by the Commission as in the instant case.

PROPOSITION 4

The order of the Commission involved herein constitutes a valid exercise of police powers of the State for the protection of correlative rights.

Entirely aside from the utility, common carrier and common purchaser statutes of the State of Oklahoma, the Commission had ample authority to make the order involved herein, under Chap. 198, Session Laws, 1913, or Chap. 197, Session Laws, 1915. The authorities uniformly and universally recognize the inherent power of the State to protect correlative rights in the exercise of its police powers.

Under the provisions of Chap. 198, Session Laws, 1913 (Appendix D) Peerless was the owner of all natural gas under the surface of section 14 into which it had drilled its well. By drilling the well involved it had reduced such natural gas to possession. Under said Act any person, firm or corporation taking gas from a gas field, except for the purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own use, must take gas ratably from each owner of the gas in proportion to his interest in said gas, upon such terms as may be agreed upon between said owners, and the party taking such, or in case they cannot agree, at such a price and upon such terms as may be fixed by the Commission.

Chap. 197, Session Laws, 1915 (Appendix E) provides, among other things, "the said Commission is authorized and directed to promulgate rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of natural gas from any well in such common source of supply within the State so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another." Said statute places the prevention of waste and the protection of correlative rights of the public, and the private rights of all those having a right to produce from a source of supply, on an equal basis. It does not provide that correlative rights may be protected only when the Commission considers it necessary to prorate gas for the purpose of preventing waste. The prevention of waste and the protection of correlative rights of all those having right to produce from a source of supply are placed upon an equal basis; neither is dependent upon the other and the Commission may invoke its authority and jurisdiction for the protection of correlative rights alone, as well as for the prevention of waste of natural gas.

Republic, without citation of authority, contends that there is no justification for the Commission's order, although it protects correlative rights, unless said order is also made for the purpose of preventing and does prevent waste.

In that connection, we wish to call to the attention of this Court excerpts from the opinion in the case of *Thompson, et al.* v. *Consolidated Gas Utilities Corporation, et al.*, 300 U. S. 55. This case is, in our judgment, ample and explicit authority for the position that an order of a regulatory body, such as involved herein, is justified

if it bears a reasonable relationship to the protection of correlative rights, alone. In that opinion the Court said, "But, obviously, the proration orders would not be valid if shown to bear no reasonable relation either to the prevention of waste or of the protection of correlative rights, or if shown to be otherwise arbitrary." Thus, this Court, in that opinion, has laid down the principle that an order is valid if it has a reasonable relation either to the prevention of waste or the protection of correlative rights.

In that case the order involved was stricken down for the reason that it bore no reasonable relation either to the prevention of waste or the protection of correlative rights, the Court saying:

> "In the light of these findings the lower court concluded that the order was not intended to prevent waste attributable to plaintiffs; and that it was not intended to adjust correlative rights in the common reservoir for the purpose of averting unjust drainage from the reserves of those wells lacking pipe line connections. On the other hand, the Court concluded that the proration ordered, with its drastic limitation of output from wells now connected to pipe lines, will obviously not protect those wells against undue drainage to other parts of the field, but will deprive their owners of the protection which fuller production would offer. These findings are adequately supported by the evidence."

This Court, there, recognized the right of a Commission, by order such as involved herein, to protect owners against undue drainage to other parts of the field. In that case the order not only did not protect the complainants against drainage, but in fact prevented them from protecting themselves and their gas reserves against undue drainage of their natural gas to other parts of the field.

In the instant case Peerless contends and the evidence is without dispute, that the order of the Commission is

necessary to prevent all its natural gas underlying section 14 from being drained by the wells of another.

In the Thompson case the complainants contended, the evidence established, and the trial court found, that the order was not necessary to protect the proponents of the order from drainage, but in fact prevented the complainants from protecting themselves from drainage from their reserves to the reserves of others.

In the instant case Peerless contends and the evidence without dispute establishes that its property is being taken without any compensation by another (Republic) and that the order is necessary to protect Peerless from drainage.

In the instant case the pipe line company (Republic) entered the State, made its contracts, and engaged in the production of natural gas long after the enactment of the plain and unmistakable provisions of the statutes involved.

In the Thompson case the complainants had made their contracts, had constructed their lines, had drilled their wells and had produced the gas under existing laws prior to the enactment of the statute involved, and contended that the subsequently enacted statute impaired their contractual rights and took away from them vested property rights.

In the instant case the property and vested property rights of Peerless are being taken by Republic.

The order involved in the Thompson case was stricken down because it bore no reasonable relation either (1) to the prevention of waste, or (2) to the protection of correlative rights. The court found that the complainants were producing their property (1) without waste and (2) without damage and injury to others.

In the instant case, according to the undisputed evidence, the findings of the Commission, and those of the

Supreme Court of Oklahoma, Republic is not only taking but eventually will confiscate the properties of Peerless. The order is therefore necessary to protect correlative rights.

We have no doubt, from the language of the opinion in the Thompson case, that had the situation, there, been the same as that which exists in the instant case, and had the order of the Commission been necessary to protect the proponents from drainage by the complainants, the decision of this Court would have been to sustain the order of the Commission there involved. This court in the Thompson case clearly held, in our judgment, that as a matter of law there is no difference in an order which requires a direct connection, as does the order involved herein, and an order which by indirection through proration obtains the same result. Either order would be valid if it bore a reasonable relation either (1) to the prevention of waste or (2) the protection of correlative rights.

Wholly aside from the question of waste of a natural resource, we find ample authority in the decisions of the states, and of this Court, to support an order, such as is involved, when based solely and entirely upon the protection of property rights or of correlative rights such as are involved in the instant case.

A well recognized application of this rule has to do with the zoning ordinances of municipalities, in so far as the same affect the drilling of wells for the production of oil and gas. In such instances the powers of the local authorities are based solely and entirely upon the police powers, and are exercised for the purpose of *protecting the safety and/or property of the citizens.* One of the earliest cases involving such a situation is that of *Marrs, et al.* v. *City of*

Oxford, et al., 32 F. (2d) 134 (8 C.C.A.). In that case there was involved a zoning ordinance of the City of Oxford which, for the purpose of protecting the lives and property and the exercise of property rights by its citizens, prohibited the drilling of more than one well in any one city block. Plaintiff sought to drill a well within 75 feet of a well then being drilled in the same block, and brought an action to enjoin the City from enforcing the zoning ordinance against him. The Circuit Court of Appeals upheld the ordinance as being a proper exercise of the police power, saying: "The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community." It cited with approval *Winkler* v. *Anderson*, 104 Kan. 1, 177 Pac. 521, 3 A. L. R. 268 to the effect that: "The police power extends, not only to the protection of the public safety, health, and morals, but to the promotion of the common convenience, prosperity, and welfare," and further that "Steam and electric railway rights of way may be exploited, and unless the works, structures, establishments, activities, and products of mining operations be kept at a safe distance from railway tracks, life and property might be endangered, commerce impeded, and the general welfare seriously affected." The foregoing decision which recognizes the validity of legislation and regulations based on the police power for the purpose of protecting property or property rights has been recognized and followed by the Supreme Court of the State of Oklahoma in similar matters.

In the case of *Amis* v. *Bryan Petroleum Corporation*, 185 Okla. 206, 90 Pac. (2d) 936, there was involved an application of the police powers, by the City of Oklahoma

City, under the zoning statutes and the city zoning ordinances enacted pursuant thereto.

In that case the Supreme Court of Oklahoma upheld the right of the City Board of Adjustment to fix the pro rata basis upon which non-assenting owners in a drilling block should participate in a well drilled therein, holding that the board was authorized to award reasonable lease bonuses to non-assenting lot owners or to permit them to participate in the operations upon posting of a bond within the stated time. The order also required the property owner upon whose property the well was drilled to share the 1/8th royalty, from the production derived from the well, with the owners of other property in the drilling block, each of whom should participate in the 1/8th royalty in the ratio that the area of each bore to the total area in the drilling block. In passing upon the objections there made to the operation of the order, which objections are similar to those made by the Republic, the Supreme Court of Oklahoma said:

> "The fundamental right to full use and enjoyment of private property by its owner is not abridged in cases of this character except by valid regulatory measure enacted under the police powers of the State or municipality. The privilege of producing oil and gas from one's property is inherent in ownership, and may be fully exercised until legally restricted or entirely prohibited by enactments looking to the public welfare. The production of oil and gas is inherently dangerous, and it should be borne in mind that by reason of the very nature of the industry a greater necessity for more strict regulation would arise than in the usual and customary business conducted in a city. Statutes delegating general police powers are, in cases of this character, entitled to a broader and more liberal construction than is ordinarily accorded. The

municipality will not be held strictly within the powers as designated. It may inaugurate any regulation that by reasonable implication will fall within its delegated powers. See 12 C. J. 910, sec. 418; 43 C. J. 193, sec. 190.

The court held that there was no taking of property in the sense prohibited by the Constitution.

Other cases by the Oklahoma Supreme Court to the same effect are: *Cook* v. *Westgage-Greenland Oil Co. et al.*, 185 Okla. 209, 90 Pac. (2d) 940; *Inland Development Co.* v. *Beveridge, et al.*, 185 Okla. 174, 90 Pac. (2d) 942; *Phillips Petroleum Co.* v. *Davis, et al.*, 194 Okla. 84, 147 Pac. (2d) 135; *Harper, et al.* v. *Lord, et al.*, 195 Okla. 386, 158 Pac. (2d) 472.

Republic complains that the effect of the order involved herein will be to require it to share its markets and its pipe line facilities with Peerless.

This merely confirms our suspicion that Republic believes it has a corner on the markets, one of the things the Legislature of Oklahoma sought to prevent in the legislative enactments involved herein.

Republic is admittedly selling gas to Cities Service Gas Company and Northern Natural Gas Company, which companies are, according to Republic's admission, common purchasers of natural gas (Republic's Brief, Page 3).

If these companies be common purchasers and common carriers, how can it be said that Republic will be required to share its markets with Peerless. Such markets are public markets.

If there was any question as to the facts which justified the enactment of the legislative acts involved, these con-

tentions and admissions of Republic should be sufficient to establish the existence of the same. In any event such facts are presumed to have existed. *Pacific States Co.* v. *White*, 296 U. S. 176, 186.

In the case of *C. C. Julian Royalties Co.* v. *Capshaw*, 145 Okla. 237, 292 P. 841, cited by Republic, the Supreme Court said:

> "Surface owners of land have the right to drill for and reduce to possession the oil and gas *beneath*; but this right is to all of the owners alike, *and when numerous surface owners seek to produce from a common pool, it is within the police power of the state, in keeping with due process of law, to require the several surface owners to produce same under reasonable regulations to the end that some of said owners may not take from the common source more than their equitable share.*" (Emphasis supplied)

In the case of *Russell* v. *Walker*, 160 Okla. 145, 15 P. (2d) 114, the Supreme Court of Oklahoma said:

> "It is within the police power of the state to impose reasonable regulations *to the end that some of said owners may not take from the common source of supply more than their equitable share.*" (Emphasis supplied)

In the case of *Grison Oil Corporation, et al.* v. *Corporation Commission*, 186 Okla. 548, 99 P. (2d) 134, the Court said:

> "The requirement of ratable, or proportionate, taking is designed for the protection of private rights of individual operators."

Thus the Supreme Court of Oklahoma in the *Grison* case recognizes "private correlative rights" (of Peerless) of which the Republic is so contemptuous.

In the case of *Gruger, et ux.* v. *Phillips Petroleum Company*, 135 P. (2d) 485, the first paragraph of the syllabus recognizes the very position which we, here, seek to maintain:

> "The law of 'capture' under which oil and gas are owned by the one lawfully reducing them to possession, still obtains in Oklahoma, *except as such law has been or may be regulated or restricted under laws passed in the exercise of the police power, such as the proration and spacing statutes and city zoning ordinances*, 11 O. S. 1941, Sections 401-410; 52 O.S. 1941, Sections 81-138, Section 87." (Emphasis supplied)

There are many decisions of the Supreme Court of the United States which are to the same effect as the Oklahoma decisions cited above.

The zoning ordinances of the City of Oklahoma City were upheld in the case of *Gant* v. *Oklahoma City*, 289 U. S. 98.

The Supreme Court of Oklahoma, in the case of *Oklahoma Natural Gas Corporation* v. *State*, 161 Okla. 104, 17 Pac. (2d) 488, had under consideration a set of facts similar if not identical with that involved in the instant case. The Order entered was quite similar to that entered in the instant case, the only essential difference being that in the Oklahoma Natural case the Commission went even further in its Order than did the Commission in the instant case.

For a proper consideration of this case we will set out as briefly as possible the facts involved, the contentions made by those who opposed the Commission's Order and the final result obtained.

The complainants in that case were the owners of the minerals lying in and under certain lands in Creek County, Oklahoma, which was under lease to Olean Petroleum Co. which had in the month of November, 1926, entered into a contract with the respondent, Oklahoma Natural Gas Corporation by the terms of which the said Oklahoma Natural Gas Corporation was to purchase and remove from said lease the natural gas then being produced and to be produced in the future on the said lease from two gas wells which had been drilled and completed thereon. Lima Oil & Gas was the owner of leases covering adjoining properties in which two wells had been drilled, which wells were connected with the pipe lines of Empire Gas & Fuel Co., under contract with said lessee, Lima Oil & Gas Co.

The complaint alleged that Lima Oil & Gas had produced from its said wells, drilled on off-setting properties, and sold and delivered to the Empire Gas & Fuel Co., natural gas in amounts far in excess of that which Olean Petroleum Co., had produced and sold to Oklahoma Natural Gas Corporation. The complaint asked the Commission to make an order requiring Empire Gas & Fuel Co., to connect its pipe line or lines with the wells drilled on complainants property and to take therefrom an amount of gas sufficient to equalize the takings from said well as compared with the gas taken from the off-setting wells and that Oklahoma Natural Gas Corporation be ordered, directed and required to permit the said Empire Gas & Fuel Co., to connect its pipe line to said well located on complainant's property for the purpose of equalizing the taking therefrom as compared with the taking from said wells off-setting the same to which Empire Gas & Fuel Co.'s lines were already connected. The complaint alleged and the evidence showed that although the well on complain-

ant's property had an open flow capacity of gas in excess of the combined open flow of both the wells belonging to Lima Oil & Gas Co., to which said Empire Gas & Fuel Co., had connected its lines, that since November 1, 1926, and up to and including September 30, 1929, the Oklahoma Natural Gas Corporation had purchased and removed from the wells owned by these complainants and in which they are interested as royalty owners, 1,177,151,000 cu. ft., of natural gas, while the Empire Gas & Fuel Co., had purchased and removed from the off-setting wells belonging to the Lima Oil & Gas Co., and described as Benjamin Well No. 2 and Benjamin Well No. 3, 3,416,072,000 cu. ft. of gas, or 2,238,921,000 cu. ft. of gas in excess of the amount which the Oklahoma Natural Gas Corporation had been able or willing to take from the well of the complainants or from the well in which they were interested as royalty owners; and that by reason of said unequal taking as between the Oklahoma Natural Gas Corporation and the Empire Gas & Fuel Co., complainants had been sustaining great and irreparable damage and loss from the fact that the gas belonging to complainants, owing to the inequitable and unequal taking as between two said common purchasers of gas, was being drained from beneath the premises of complainants and the wells in which they were interested and taken out from the wells off-setting those of complainants and to which the lines of the Empire Gas & Fuel Co., were connected and belonging to the Lima Oil & Gas Co. A plat was attached to the complaint showing the location of the wells and their relative position in the common pool under consideration.

The Commission's Order entered in that case required Empire Gas & Fuel Co., to connect its lines to the well located on complainant's properties and to take therefrom natural gas until the take from complainant's wells had

been equalized with that taken from offsetting wells. The Order required Oklahoma Natural Gas Corporation to permit such connection to be made and required that Lima Oil & Gas Co., permit such connection and a proportionate reduction in the production from its wells until such equalization was had. The Order involved affected Oklahoma Natural Gas Corporation and Empire Gas & Fuel Co., which companies were admittedly utilities, common carriers, and common purchasers, but it also affected alike Lima Oil & Gas Co., and Olean Petroleum Co., which companies were lessees and producers of natural gas not engaged in piping or transporting natural gas.

The issue involved in that case was briefly and concisely stated in the appellant's brief as follows:

> "There is presented here only the question as to the remedy to be applied when one producer, through the medium of a common purchaser with whom it has a contract, is taking more gas than its ratable share, as determined by the market and the total common available supply." (p. 496).

The appellants in that case raised and presented all questions raised herein by Republic. The appellants there contended:

1. That the Commission had no jurisdiction to enter the Order involved for the reason that the prevention of waste is the main object of the 1915 Act and waste was not involved.

2. That the Commission could not establish relief as between two parties brought into the controversy because of third pipe line in the field, and there was no evidence before the Commission as to the amount of gas being taken by that line.

3. *It was never the intention of the Act that the Commission should compel the taking of more gas from one well than was being taken already* but only that it should prevent the taking of a greater amount by one person than the law allows while other persons were remaining within the proper ratable sphere as justified by market demand.

4. That the Commission's Order in effect created a contract which was beyond the Commission's power to make and in this connection stated:

"It is not denied that the Commission has the power, under proper circumstances, to abrogate a contract which is in violation of public policy; to modify such a contract; and particularly where rates are concerned, or service, to specify conditions or activities regardless of contract. It is not, however, conceivable that the Commission can in effect create and execute a contract in which the contracting parties are two pipe line companies, two leasing companies and a group of lessors; creating a situation which vitally affects more or less seriously each individual and company involved; and, compels the lion and the lamb to lie down together, regardless of the rights or desires of either." p. 494.

5. That the Commission's jurisdiction, as exercised, infringed upon constitutional rights, *and that the right of Lima Oil & Gas Co., under its lease, and the Olean Petroleum Co., under its lease, is to sell the gas, that they had made contracts for its purchase with different companies,* and that the Corporation Commission could not interfere with such contracts by virtue of its regulations.

6. That if the Empire Gas & Fuel Company should attempt to obey the order of the Commission, it would have to to so at the expense of other sellers

in the field, and that each cubic foot taken from the well on complainant's property to supply its market must result in a reduction of the takes from any other wells to which it may be connected in the field.

7. That the Order took no account of any other wells in the field and made no uniform ruling except as to the one specifically involved.

8. That the Order took no account of the distinctions between inter-state and intra-state market.

9. That the effect of the Order was that no contracts whatever could be made and no dependable reservoir of supply created.

The Supreme Court of Oklahoma in passing on these contentions, in each instance, ruled against the appellants and sustained the Order of the Commission.

That decision is a full and complete answer of each and every contention made by Republic in the instant case.

In line with the decision of this court in the case of *Pieree Oil Corporation* v. *Phoenix Refining Co., supra,* the Supreme Court of Oklahoma in the *Oklahoma Natural Case, supra,* said:

> "Under these sections of the statute there is not only imposed the duty upon common purchasers of natural gas within the State of Oklahoma to take the gas of all without discrimination, but as if that was not sufficient, Section 7928 imposes an obligation upon all such concerns to accept explicitly and with the proper authority all the terms and provisions of the act as a condition precedent to its engaging in the business of transporting, purchasing or piping natural gas at all. We assume that each of the respondents in this case have filed these ac-

ceptances and have obligated themselves to conform to the terms and provisions of the statute as required by law." (p. 492).

In referring to the contention that contracts were affected by the Commission's Order, the same Court said:

> "As applied to the proposition of contracts having been made, and therefore the lessee could handle the entire production as they saw fit, we think unquestionably that the proration law must be taken into the account in judging of the contracts, and that, whenever the contracts violate the law, the usual rule of a contract being made in violation of a law and subject thereto would apply. We think that these contracts were made entirely subject to the law on the subject of proration that had been theretofore enacted. In fact, such was the understanding of the parties when they made the contracts, and they provided accordingly, as shown by extracts quoted from the contract." (p. 497).

In the Oklahoma Natural case the Oklahoma Supreme Court not only construed Chapter 197 S. L. 1915, but held the penalties provided in Chapter 198 Session Laws 1913 were not exclusive remedies.

Republic argues in its brief that because the Commission had fixed an allowable for each well in the field, Republic is entitled to take the allowable, provided for in the general or basic order of the Commission, and so long as it takes no more than such allowable Republic is not amenable to any other or further order of the Commission. The fallacy of this argument is apparent. If that argument be followed to its conclusion, Republic could drain all the gas from underneath said Section 14 into which the well of Peerless has been drilled and Peerless would have no recourse. The purpose and intent of the basic order is that Republic can take its allowable when and only when other

producers in the field are afforded the same opportunity. The basic order of the Commission clearly contemplates this because it provides for a tender to be made, by the owners of unconnected wells, of the gas produced and to be produced therefrom. Such tender is the basis and condition precedent for a proceedings such as that which we have involved in the instant case. What other purpose could be served by such a tender? The fact that the allowable of an unconnected well may not be cancelled is no comfort or protection to the producer who has tendered his gas. If conditions continue, in the future as in the past, Peerless would accumulate millions of cubic feet of unused allowable while Republic would completely and entirely drain all of the natural gas underneath said Section 14. It is presumed that the law and the Commission will not do a futile thing. An allowable which cannot be used is certainly a most futile thing. The only conclusion to be reached is that in providing for a tender the Commission contemplated that such tender should be a condition precedent to the making of an application seeking a connection, such as has been made in the instant case, and is a part and parcel of the plan of proration provided for in the basic order of the Commission. The basic orders of the Commission (Appendicies G and H) require all producers and takers to comply with the common purchaser and ratable taking laws of the state.

Where citizens of a state have a common interest and use or enjoyment of any type of property, the police power is bound to extend to the adjustment of that use so that all may be protected. *Bacon* v. *Walker*, 204 U. S. 311. This case involved the right of the State of Idaho to prohibit persons owning sheep from permitting them to graze within two miles of the possessory claims or dwelling houses of other people. It was admitted that all persons

had the right to graze stock on the public domain, and the object of the statute was to adjust the rights of those owning cattle with those owning sheep. The Supreme Court in sustaining the validity of the statute, said:

> "Is it true, therefore, even if it be conceded that there is right or license to pasture upon the public domain, that the state may not limit or regulate the right or license? Defendants in error have an equal right with plaintiff in error, *and the state has an interest in the accommodation of those rights.*" p. 315. (Emphasis supplied)

The Court referred to the opinion of the State court as follows:

> "And the court pointed out that it was not the purpose or effect of the statutes to make discriminations between sheep owners and owners of other kinds of stock, but to secure equality of enjoyment and use of the public domain to settlers and cattle owners with sheep owners." (p. 319).

Thus it is seen that the correlative rights doctrine has been applied to the adjustment of conflicts between sheep owners, cattle owners, and owners of dwellings. No physical waste of a natural resource was involved, and none was needed. Co-equal and co-existing rights in a common property were sufficient for the police power to intervene and adjust conflicts, and to insure to each class the opportunity to continue in business and enjoy the public domain.

There are many cases where courts of equity, even in the absence of statute, have intervened to prevent one person from securing an unjust proportion of a common fund of percolating or artesian waters to the detriment of others entitled to enjoy the benefit of the waters. See *Bassett* v. *Salisbury Mfg. Co.*, 43 N. H. 569, 82 Am. Dec. 178; *Katz* v. *Walkinshaw*, 141 Cal. 116, 70 Pac. 663; *Meeker* v. *East Orange*, 77 N. J. L. 623, 74 Atl. 379;

Forbell v. *New York*, 164 N. Y. 522, 58 N. E. 644, 51 L. R. A. 695.

There are, of course, other cases which follow the doctrine of *Acton* v. *Blundell*, 12 Mees, & W. 324, to the effect that, in the absence of a governing statute, one may not be restrained in the amount of percolating waters he withdraws, regardless of the effect of such withdrawals on others. The so-called American rule of reasonable use, however, has constantly grown, especially in the western states where local conditions made some sort of control vital to the interest of the people. Statutory regulations designed to accomplish the protection of the rights of all entitled to produce such waters have been enacted and sustained. *Ex Parte Elam*, 6 Cal. App. 233, 91 Pac. 811; *Eccles* v. *Ditto*, 23 N. M. 235, 167 Pac. 726.

As was said by the court in *Eckel* v. *Springfield Tunnel & Development Co.*, 262 Pac. 425 (quoting from authorities):

> "There is a distinction between the English rule as modified by the modern American rule of reasonable use and the rule of correlative rights. Under the rule of reasonable use some of the authorities hold that a land owner has a right to make such a beneficial use of the water found percolating through his land to the extent that may be necessary for the improvement of his land, so long as it is used thereon, although in so doing he may drain the lands of his neighbors. Upon the other hand, the rule of correlative rights to these owners is the rule which abrogates the English rule as to these waters and holds that the rights of all land owners over a common basin, saturated strata, or underground reservoir, are coequal or correlative, and that one land owner can not extract more than his share of the water even for use on his own lands,

where the rights of others are injured thereby." (p. 427)

The doctrine of the water cases had its growth, not because of the existence of waste and the use which was made of the waters involved, but by virtue of the recognition on the part of courts and legislatures that, where many are withdrawing or have the right to withdraw from a common source of supply, the coequal rights of all must necessarily be adjusted or regulated so that each may have the opportunity to enjoy the common fund.

The principle is a logical outgrowth of the *sic utere* doctrine, which is the very foundation of the police power of the state.

Head v. *Amoskeag Mfg. Co.*, 113 U. S. 9, is apposite. The Legislature of New Hampshire passed a law authorizing the erection of mill dams upon and across any non-navigable stream, even though the erection of the dam had the effect of overflowing, draining or injuring the land of other persons, provided, however, for the payment of damages to the persons damaged. In effect the statute, in a backhanded sort of way, conferred the right of eminent domain on mill owners. The Supreme Court, however, refused to pass on the constitutionality of the statute as a delegation of the right of eminent domain, because the statute could be sustained on the right of the Legislature under its police power to regulate and adjust the rights of proprietors adjacent to streams. The opinion has this language:

> "We prefer to rest the decision of this case upon the ground that such a statute, considered as regulating the manner in which the rights of proprietors of lands adjacent to a stream may be asserted and enjoyed with a due regard to the interests of all, and to the public good, is within the constitutional power of the Legislature.

> "When property, in which several persons have a common interest, cannot be fully and beneficially enjoyed in its existing condition, the law often provides a way in which they may compel one another to submit to measures necessary to secure its beneficial enjoyment, making equitable compensation to any whose control of or interest in the property is thereby modified." (p. 21)

In the *Head* case the Legislature decided that the co-existing rights of the owners of lands adjacent to non-navigable streams could be fairly adjusted by permitting one to overflow the land of another in the erection of a dam and providing for compensation. This was the remedy which the Legislature decided was necessary to provide for the adjustment of the conflict presented by the interests there involved.

Under a different fact situation, it has been held that the Legislature of a state has the power to require each owner of property, in which others have an interest, to incur expense even against his will. In *Wurts* v. *Hoagland*, 114 U. S. 606, a New Jersey statute was sustained providing for the drainage of any low or marshy land, upon proceedings instituted by at least five owners of separate lots included in the tract, the expense to be shared by all the owners. The opinion has this language:

> "This review of the cases clearly shows that general laws for the drainage of large tracts of swamps and lowlands, upon proceedings instituted by some of the proprietors of the lands to compel all to contribute to the expense of their drainage, have been maintained by the courts of New Jersey (*without reference to the power of taking private property for the public use under the right of eminent domain, or to the power of suppressing a nuisance dangerous to the public health*) as a just and constitutional exercise of the power of the legislature

to establish regulations by which adjoining lands, held by various owners in severalty, and in the improvement of which all have a common interest, but which, by reason of the peculiar natural condition of the whole tract, can not be improved or enjoyed by any of them without the concurrence of all, may be reclaimed and made useful to all at their joint expense." (p. 613). (Emphasis supplied)

The doctrine of the two cases last cited was reiterated in the leading case of *Fallbrook Irrigation Dist.* v. *Bradley*, 164 U. S. 112, in the following language:

"If it be essential or material for the prosperity of the community, and if the improvement be one in which all the landowners have to a certain extent a common interest, and the improvement cannot be accomplished without the concurrence of all or nearly all of such owners by reason of the peculiar natural condition of the tract sought to be reclaimed, then such reclamation may be made and the land rendered useful to all and at their joint expense. In such case the absolute right of each individual owner of land must yield to a certain extent or be modified by corresponding rights on the part of other owners for what is declared upon the whole to be for the public benefit." (p. 163).

In instances where the police power has been applied in the regulation of conduct which will necessarily affect the rights and interests of others may be multiplied without number. An extreme example is afforded by the party-wall cases, such as *Jackman* v. *Rosenbaum Co.*, 260 U. S. 22, and *Swift* v. *Calnam*, 102 Iowa 206, 71 N. W. 233, where statutes were upheld which allowed one person to build a party-wall on his neighbor's land even without the neighbor's consent.

Competitive conditions are not beyond the purview of the police power. Where economic maladjustments exist

which are of concern to the public, Congress in its sphere, and the state Legislature acting under the police power, can adopt reasonable measures for their correction. See *Pipe Line Cases*, 234 U. S. 548; *Munn* v. *Illinois*, 94 U. S. 113; *Nebbia* v. *New York*, 291 U. S. 502; *Borden's Farm Products Co.* v. *Ten Eyck*, 297 U. S. 251; *Parker, Director of Agriculture, et al.* v. *Brown*, 317 U. S. 341.

Legislation which is valid under one state of facts might be entirely invalid when applied to different conditions and different facts. See *Clark* v. *Nash*, 198 U. S. 361, and *Offield* v. *New York, etc. R. Co.* 203 U. S. 372. But if the problem is sufficiently serious, if the public at large is interested in its proper solution, if private interests are so conflicting that there must be a legislative correction to prevent harmful discord, then any reasonable solution worked out by the Legislature falls well within the limits of constitutionality, and private rights must yield.

Even in cases where statutes have been enacted for the purpose of preventing waste of natural resources, the cases are uniform that where the regulatory body has assumed jurisdiction for the purpose of making rules and regulations for preventing waste, such regulatory body must, in the course of so doing, make reasonable and equitable rules and regulations for the protection and adjustment of correlative rights of all parties involved.

In the case of *Ohio Oil Company* v. *Indiana*, 177 U. S. 190, there was involved a statute of the State of Indiana. Although the statute involved might be denominated a waste statute, it was invoked in the case involved for the sole purpose only of protecting correlative rights. The title, preamble and first section of the Act are as follows:

> "'An act concerning the sinking, safety, maintenance, use and operation of natural gas and oil

wells, prescribing penalties and declaring an emergency.

"'Whereas, great danger to life, and injury to persons and property is liable to result from the improper, unsafe and negligent sinking, maintenance, use and operation of natural gas and oil wells; therefore,

"'Section 1. Be in enacted by the General Assembly of the State of Indiana, That it shall be unlawful for any person, firm or corporation having possession or control of any natural gas or oil well, whether as a contractor, owner, lessee, agent or manager, to allow or permit the flow of gas or oil from any such well to escape into the open air, without being confined within such well or proper pipes or other safe receptacle, for a longer period than two (2) days next after gas or oil shall have been struck in such well. And thereafter all such gas or oil shall be safely and securely confined in such well, pipes or other safe and proper receptacles'."

The issue in that case is stated by the court as follows:

"The issue which this record presents, on the subject of the law just referred to, is this: Did the enforcement of the first section of the statute produce as to the persons whose obedience to its commands were coerced by injunction, a taking of private property without adequate compensation; that is, did the execution of the statute amount to a denial of due process of law contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States?"

The Attorney General of the state instituted a complaint in which it was alleged that the defendant, in producing oil from one of its wells, permitted the natural gas to escape therefrom, that such escape would eventually exhaust the natural gas in the field to the damage of other

producers who desire to produce natural gas and to the damage and injury of the public in general and prayed for an injunction prohibiting, restraining and enjoining the defendant from suffering and permitting the natural gas produced from its wells to escape. A temporary injunction was issued as prayed for.

The defendant answered. The gist of its answer being to the effect that it could not produce oil from its well without permitting natural gas to escape; that if the injunction be granted it would be prevented from producing oil from its well and thereby be deprived of its property in violation of the Constitution of the United States.

The State demurred to the answer as not alleging facts sufficient to constitute a defense, the demurrer was sustained and a decree was entered granting a permanent injunction from which the appeal was taken. In passing on the proposition there involved the Supreme Court of the United States said:

> *"On the other hand, as to gas and oil, the surface proprietors within the gas field all have the right to reduce to possession the gas and oil beneath. They could not be absolutely deprived of this right which belongs to them without a taking of private property.* But there is a co-equal right in them all to take from a common source of supply, the two substances which in the nature of things are united, though separate. It follows from the essence of their right and from the situation of the things, as to which it can be exerted, *that the use by one of his power to seek to convert a part of the common fund to actual possession may result in an undue proportion being attributed to one of the possessors of the right, to the detriment of the others, or by waste by one or more, to the annihilation of the rights of the remainder.* Hence it is that the legislative power, from the peculiar nature of the right

and the objects upon which it is to be exerted, *can be manifested for the purpose of protecting all the collective owners, by securing a just distribution, to arise from the enjoyment by them, of their privilege to reduce to possession, and to reach the like end by preventing waste.* This necessarily implied legislative authority is borne out by the analogy suggested by things ferae naturae, *which it is unquestioned the legislature has the authority to forbid all from taking, in order to protect them from undue destruction,* so that the right of the common owners, the public, to reduce to possession MAY be ultimately efficaciously enjoyed. Viewed, then, as a statute to protect or to prevent the waste of the common property of the surface owners, the law of the State of Indiana which is here attacked because it is asserted that it devested private property without due compensation, *in substance, is a statute protecting private property and preventing it from being taken by one of the common owners without regard to the enjoyment of the others.* Indeed, the entire argument, upon which the attack on the statute must depend, involves, a dilemma, which is this: *If the right of the collective owners of the surface to take from the common fund, and thus reduce a portion of it to possession, does not create a property interest in the common fund, then the statute does not provide for the taking of private property without compensation.* If, on the other hand, there be, as a consequence of the right of the surface owners to reduce to possession, a right of property in them, in and to the substances contained in the common reservoir of supply, then as a necessary result of the right of property, its indivisible quality and the peculiar position of the things to which it relates, *there must arise the legislative power to protect the right of property from destruction.* To illustrate by another form of statement, the argument is this: There is property in the surface owners in the gas and oil held in the natural reservoir. Their right to take cannot be regulated

without devesting them of their property without adequate compensation, in violation of the Fourteenth Amendment, and this, although it be that if regulation cannot be exerted one property owner may deprive all the others of their rights, since his act in so doing will be damnum absque injuria. *This is but to say that one common owner may devest all the others of their rights without wrongdoing, but the lawmaking power cannot protect all the owners in their enjoyment without violating the Constitution of the United States.*

"These considerations are sufficient to dispose of the case. But as there are several contentions which seem to have been considered, in argument, as resting on different premises, though such in reason is not the case, we briefly notice them separately: First. It is argued that as the gas, before being allowed to disperse in the air, serves the purpose of forcing up the oil, therefore it is not wasted, hence is not subject to regulation. Second. That the answer averred that the defendant was so situated as not to be able to use or dispose of the gas which comes to the surface with the oil; from which it follows that the gas must either be stored or dispersed in the air. Now, the answer further asserted that when the gas is stored and not used the back pressure, on the best known pump, would, if not arresting its movement, at least greatly diminish its capacity. Hence it is said the law by making it unlawful to allow the gas to escape made it practically impossible to profitably extract the oil. That is, as the oil could not be taken at a profit by one who made no use of the gas, therefore he must be allowed to waste the gas into the atmosphere, and thus destroy the interest of the other common owners in the reservoir of gas. These contentions but state in a different form the matters already disposed of. They really go not to the power to make the regulations, but to their wisdom. But with the lawful discretion of the legislature of the State we may not interfere.

"In view of the fact that regulations of natural deposits of oil and gas and the right of the owner to *take them as an incident of title in fee to the surface of the earth, as said by the Supreme Court of Indiana, is ultimately but a regulation of real property, and they must hence be treated as relating to the preservation and protection of rights of an essentially local character.* Considering this fact and the peculiar situation of the substances, *as well as the character of the rights of the surface owners,* we cannot say that the statute amounts to a taking of private property, when it is but a regulation by the State of Indiana of a subject which especially comes within its lawful authority." (Emphasis supplied)

In the case of *Bandini Petroleum Co., et al.* v. *Superior Court, Los Angeles County, California, et al.*, 284 U . . 3, this Court had under consideration the Oil and Gas Conservation Act of California which prohibited the unreasonable waste of natural gas in oil and gas fields. The term "unreasonable waste" as construed by the Supreme Court of California, means allowing gas to come to the surface in excess of a reasonable proportion to the amount of oil produced. The statute contains the provision that "The blowing, release or escape of natural gas into the air shall be deemed prima facie evidence of unreasonable waste." Proceedings were instituted in the state court for a writ of prohibition to restrain a state court from enforcing an injunction order issued pursuant to and in the enforcement of said Oil and Gas Conservation Act. In passing on the proposition involved the Supreme Court of the United States said:

"It was with that understanding of the law of the State that the District Court of Appeal considered the statute, taken as a whole, as one regulating and adjusting the co-existing rights of the surface own-

ers in the same field, and accordingly sustained the statute as a valid exercise of state power against the contentions under the due process clause. The court said: 'It is the co-existence of these rights which authorizes the State to make use of its legislative power. When the rights of one impinge upon the rights of others the State may interpose for the purpose of adjusting and regulating the enjoyment of those rights.' The District Court of Appeal apparently thought it doubtful whether the State might restrict or regulate the production of oil or gas 'on the theory of the public's interest in their natural resources' but deemed it unnecessary to decide that question in the present case. That court explicitely refused to accept the view that the statute 'does not proceed upon the theory of correlative rights, but only upon the policy of conserving or preserving the common supply.' And, replying to the suggestion that the legislature was without authority to restrict the production of oil, the District Court of Appeal concluded its opinion with the statement that the record did not 'indicate that the temporary injunction was founded upon such a theory. Nor are we determining that the Act attempts to confer upon the court any such power. Rather we are convinced that a proper construction of the enactment confines the authority within the limits of enjoining the production of gas when in excess of the reasonable proportion to the to the oil for the particular field involved, when not conveniently necessary for other than lifting purposes.'

"While this was the basis of the decision of the District Court of Appeal, the appellants insist that, in the subsequent decisions upon the appeal from the injunction order of the Superior Court, the Supreme Court of the State has taken a broader ground and has upheld the statute as one designed to protect the public interest in the conservation of natural resources. 80 Cal. at pp. 612-614; 294 Pac. at pp. 722, 723. We do not understand, how-

ever, that the Supreme Court in taking that view denied the operation of the statute as a safeguard of the co-existing rights of surface owners. On the contrary, the Supreme Court, in its second decision affirming the injunction order of the Superior Court summed up its conclusions in these words (81 Cal. at p. 471; 297 Pac. at pp. 537, 538): 'We reiterate that the legislation in question has lawfully vested in the Superior Court the power to determine what wastage of gas in the production of oil is reasonable or unreasonable. *Whether such wastage be reasonable or unreasonable is a question of fact and should be determined in view of the necessity of one land owner to make productive use of his parcel, in view of the equal right of the adjoining owners not to be deprived of correlative production from their parcels and in view of the right of the public to prevent the waste of that which cannot be replaced.*'

"If the statute be viewed as one regulating the exercise of the correlative rights of surface owners with respect to a common source of supply of oil and gas, the conclusion that the statute is valid upon its face, that is, considered apart from any attempted application of it in administration which might violate constitutional right, is fully supported by the decisions of this Court. Ohio Oil Co. v. Indiana, 177 U. S. 190, 210, 211; Lindsley v. Natural Carbonic Gas Co., supra, at p. 77; Walls v. Midland Carbon Co., 254 U. S. 300, 323. *In that aspect, the statute unquestionably has a valid operation, and it cannot be said that the Superior Court was without jurisdiction to entertain the suit in which the injunction order was granted."* (Emphasis supplied)

Since the Oklahoma Supreme Court has so many times cited with approval the case of *Lindsley* v. *Natural Carbonic Gas Company*, 220 U. S. 61, we think it well to quote from that case. In the body of the opinion at page 73 the Supreme Court of the United States said:

"Coming to the provision in question, it is necessary to inquire what construction has been put upon it by the highest court of the state, *for that construction must be accepted by the courts of the United States and be regarded by them as a part of the provision when they are called upon to determine whether it violates any right secured by the Federal Constitution.* Weightman v. Clark, 103 U. S. 256, 260; Morley v. Lake Shore Railway Co., 146 U. S. 162, 166; Olsen v. Smith, 195 U. S. 333, 342. The Court of Appeals of the State had the statute before it in Hathorn v. Natural Carbonic Gas Co., 194 N. Y. 326, and again in People v. New York Carbonic Acid Gas Co., 196 N. Y. 421, and the elaborate opinions then rendered disclose that the court, having regard to the title of the act and to the doctrine of correlative rights in percolating waters which prevails in that State, as recognized in Forbell v. City of New York, 164 N. Y. 522, construed this provision, not as prohibiting the specified acts absolutely or unqualifiedly, *but only when the mineral waters are drawn from a source of supply not confined to the lands of the actor but extending into or through the lands of others, and then only when the draft made upon that source of supply is unreasonable or wasteful, considering that there is a coequal right in all the surface owners to draw upon it. In other words, the court, by processes of interpretation having its approval, read into the provision an exception or qualification making it inapplicable where the waters are not drawn from a common source of supply, and also where, if they be drawn from such a source, no injury is done thereby to others having a like right to resort to it.*" (Emphasis supplied)

In the case of *Champlin Refining Co.* v. *Corporation Commission of Oklahoma, et al., supra,* 286 U. S. 210, there was involved the oil proration statutes of Oklahoma. The Supreme Court of the United States said:

"In Oklahoma, as generally elsewhere, land owners do not have the absolute title to the gas and oil that may permeate below the surface. These minerals, differing from solids in place such as coal and iron, are fugacious and of uncertain movement within the limits of the pool. Every person has the right to drill wells on his own land and take from the pools below all the gas and oil that he may be able to reduce to possession, including that coming from land belonging to others; *but the right to take and thus to acquire ownership is subject to the reasonable exertion of the power of the State to prevent unnecessary loss, destruction or waste. And that power extends to the taker's unreasonable and wasteful use of natural gas pressure available for lifting the oil to the surface and the unreasonable and wasteful depletion of a common supply of gas and oil to the injury of others entitled to resort to and take from the same pool.* Ohio Oil Co. v. Indiana, 177 U. S. 190. Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 77; Bandini Co. v. Superior Court, 284 U. S. 8, 19 et seq.; Brown v. Spillman, 155 U. S. 665, 669; Walls v. Midland Carbon Co., 254 U. S. 300, 323; Rich v. Doneghey, 71 Okla. 204, 177 Pac. 86; People v. Associated Oil Co., 211 Cal. 93, 100 et seq., 294 Pac. 717." (Emphasis supplied)

In the case of *C. C. Julian Oil & Royalties Co.* v. *Capshaw, supra,* there was again involved the oil proration statutes of Oklahoma, and in that case the Supreme Court of Oklahoma said:

"The Legislature may also regulate and restrict the use and enjoyment of landowners of the natural resources of the state, such as subterranean waters, gas, oil and timber, *so as to protect them from waste and prevent the infringement of the rights of others. Such legislation does not infringe the constitutional inhibitions against the taking of property without due process of law, denial of the equal protection of the laws, or taking property without just compensation.*" (p. 844). (Emphasis supplied)

In that case Judge Albert C. Hunt, in a specially concurring opinion, said:

*"But there is a co-equal right in them all to take from a common source of supply, the two substances which in the nature of things are united, though separate * * * The right of the owner of property to do with it as he pleases is subject to the limitation that he must have due regard for the rights of others * * * On account of the vagrant and fugitive nature of oil in the ground it was clearly within the powers of the Legislature to protect 'the co-equal rights' of all the owners of land in a common source of supply of crude oil in order to prevent any of such owners from taking from the pool more than his fair proportionate share of the oil and gas in pool, and it could reach such end by preventing waste.*

"In 6 R. C. L. 'Constitutional Law,' section 186, it is said:

"The police power to a large extent rests on the maxim 'Sic utere tuo ut alienum non laedas,' and it is the function of the government by which this maxim is enforced. One of the objects of government is to impose that degree of restraint on individual action which is required for the reasonable enjoyment of all in their respective rights. It has been said that nearly every problem involved in the police power finds its solution in application of the principle embodied in this maxim, *that* every one must so use his own property as not to injure the rights of others, and that this principle should be observed in the exercise of the police power.'

"The last sentences of sections 7956, 7957, confer authority upon the Corporation Commission *to make rules and regulations for the prevention of the prohibited waste and to so regulate the taking of crude oil or petroleum from any or all common sources of supply within the state as to prevent the*

> *. . inequitable or unfair taking from a common source of supply of crude oil or petroleum by any person, firm or corporation.*" (p. 853) (Emphasis supplied)

In the case of *Patterson* v. *Stanolind Oil & Gas Co., et al.*, 182 Okla. 155, 77 P. (2d) 83, the Supreme Court of Oklahoma had under consideration the 1935 Oil Well Spacing Act, and had involved an order of the Corporation Commission of the State of Oklahoma establishing "The North Wellston Area" in Lincoln County. The action was brought by the plaintiff Patterson, a royalty owner, against the defendants, co-lessees, to recover $988.68 allegedly due him as his share of the proceeds from the oil produced by said lessees, by reason of his ownership of an undivided 1/16th interest in the minerals under the tract of land upon which the production was had. The particular tract of land involved was a part of an 80-acre tract. The north 25 acres and south 55 acres were separately owned and covered by separate oil and gas leases owned by the defendants. The well in question was drilled upon a 10-acre tract located in the extreme northeast corner of said 80-acre tract. Said 10-acre tract consisted of 6¼ acres in the northern portion thereof, in which tract plaintiff owned his undivided interest, and 3¾ acres in the southern portion of said 10-acre tract. The well in question was drilled in the 6¼ acres in which plaintiff owned his interest and plaintiff claimed his proportionate part of all proceeds derived from said well, contending that the southern portion of said tract was not entitled to participate. Under the Commission's well spacing order, in question, the 6¼ acres in which plaintiff owned an interest and the 3¾ acres in which he owned no interest, were included in the same well spacing unit. The well, in question, was drilled upon the 6¼-acre tract in which plaintiff owned his interest.

The Commission's order contained the following provision in regard to the disposition of royalties:

> " 'In the event a producing well, or wells, is completed upon a unit where there are two or more separately owned tracts, any royalty owner, or group of royalty owners, holding the royalty interest under a separately owned tract, shall share in one-eighth of all of the production from the well or wells drilled within the unit in the proportion that the acreage of their separately owned tract bears to the entire acreage of the unit'," (p. 87)

In passing on the proposition there involved Justice Davison, speaking for the Supreme Court of Oklahoma, said:

> *"In the present case, the defendants' compliance with the above provision allows the owners of the mineral rights in the 3¼ acres of the drilling unit to share with the plaintiff and his co-owners of the mineral rights in the other 6¼ acres of the unit, the oil and gas produced from the well on said unit, though said well is located entirely upon the surface of the 6¼ acre tract. The plaintiff contends that according to the fundamental rule of oil and gas ownership, the owner of land is entitled to all of such minerals that he is able to reduce to possession thereon and that he (plaintiff) according to said rule is entitled to the portion of all of the oil and gas produced on said 6¼ acres that is provided for in his mineral deed and the defendants' lease.* His contention is that when such portion is reduced by the distribution of this production among the owners of the adjoining 3¼ acres, he is deprived of property without due process of law, and that the same is taken for private use without just compensation, and that the contractual obligations of both the deed and the lease are thereby abrogated. (p.87)
>
> • • •
>
> "Hence, it is that the legislative power, from the peculiar nature of the right and the objects upon

which it is to be exerted, *can be manifested for the purpose of protecting all of the collective owners, by securing a JUST DISTRIBUTION to arise from the enjoyment by them, of their privilege to reduce to possession, and to reach the like end by preventing waste.* (p. 88)

* * *

"Thus, in our opinion, the lawful exercise of the state's power to protect the correlative rights of owners in a common source of supply of oil and gas is not a proper subject for the invocation of the provisions of either the state or federal Constitution which prohibit the taking of property without just compensation or without due process of law and forbid the impairment of contract obligations. *As we view it the property here involved has not been taken or confiscated; its use has merely been restricted and qualified. This does not violate the due process clause of either Constitution. And this would be true even though the plaintiff were unable to prove a distinct loss to himself through the operation of the statutes putting said police power into force and effect.* (p. 89) (Emphasis supplied)

The Supreme Court of the United States in the case of *Patterson* v. *Stanolind*, 305 U. S. 376, upheld the order of the Corporation Commission which was involved in the foregoing decision, holding that, in the light of previous decisions, the plaintiff had failed to raise a substantial Federal question and dismissing the appeal for want of jurisdiction, citing: *Hannis Distilling Company* v. *Mayor and City Council of Baltimore*, 216 U. S. 288; *Levering & Garrigues Co., et al.* v. *Morrin, et al.*, 289 U. S. 103, 105, 106.

In the case of *Hunter Company, Inc.* v. *McHugh, Commissioner of Conservation, et al.*, 320 U. S. 222, this

Court had under consideration an appeal involving the construction of the Louisiana well-spacing Act. The Act, involved, provided for well spacing or drilling units and provided that when a drilling unit embraced separately owned tracts the owners might agree to pool their interests but provided that in default of such agreement, "the Commissioner shall, if found by him to be necessary for the prevention of waste *or to avoid the drilling of unnecessary wells,* require such owners to do so and to develop their lands as a drilling unit." The Act also provides "in the event such pooling is required, the cost of development and operation of the pooled unit chargeable by the operator to the other interested owner or owners shall be limited to the actual expenditures required for such purpose, not in excess of what are reasonable, including a reasonable charge for supervision. In the event of any dispute relative to such costs, the Commissioner shall determine the proper costs, after due notice to all interested parties and hearing thereon."

Pursuant to the Act the Commissioner promulgated an order which designated drilling units of 320 acres. Less than thirty days after the promulgation of this order, no application having been made by the adjacent owner to require pooling, appellant, without having designated a drilling unit or made application to the Commissioner to make an exception to the order, brought suit in the Louisiana civil district court to enjoin the enforcement of the Act and the order issued pursuant thereto. The complaint asserted the order was invalid under the State Constitution and laws, and violated the Fourteenth Amendment of the Constitution of the United States in that it made no provision for the payment to appellant of the

reasonable value of its lease and for reimbursing it for the cost of development of the gas, including the cost of drilling its well and laying its pipe line. After having determined that the case was moot because of the issuance of subsequent orders of the Commissioners, which had not been considered by the State court, this Court said:

> "In the present posture of the record, so far as the appeal seeks to bring before us for review the judgment of the state court sustaining the constitutionality of the statute, the record presents no substantial federal question. We have held that a state has constitutional power to regulate production of oil and gas so as to prevent waste and to secure equitable apportionment among landholders of the migratory gas and oil underlying their land, fairly distributing among them the costs of production and of the apportionment. Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 77; Bandini Petroleum Co. v. Superior Court, 284 U. S. 8, 22; Champlin Refining Co. v. Corporation Commission, 286 U.S. 210, 232-4; Thompson v. Consolidated Gas Corp. 300 U. S. 55, 76-7; Patterson v. Stanolind Oil & Gas Co., 305 U. S. 376, 379, and cases cited. On this appeal, absent from the record any operative order implementing Act No. 157, we cannot say that the application of the Act can be enjoined as invalid on its face, for we cannot say that no order could be made by the Commissioner which would apportion the production and distribute the costs of production and of the apportionment in a manner which would be consonant both with the requirements of the statute and the Federal Constitution, compare Patterson v. Stanolind Oil & Gas Co., supra, with Thompson v. Consolidated Gas Corp., supra. It will be time enough to consider the constitutionality of any particular apportionment and distribution of costs when we have before us the specific provisions of an order directing them which has been subjected

to the scrutiny of the state court. See Bandini Petroleum Co. v. Superior Court, supra."

The Supreme Court of Oklahoma and this Court, have upheld orders made by the City Board of Adjustment based on police powers, which orders provide for a reasonable lease bonus for non-assenting lot owners and for participation by non-assenting lot owners in the costs of drilling, completing and producing wells for the production of oil and gas, as a prerequisite to their right to share in the production, and provide that the owner on whose property the well has been drilled shall share his one-eighth royalty with the other property owners in the drilling block, each such owner sharing in the one-eighth royalty in the ratio that the total area of his property bears to the area in the drilling block.

In the case of *Patterson* v. *Stanolind, supra,* the Supreme Court of Oklahoma and this Court have upheld an order entered by the Corporation Commission of the State of Oklahoma, pursuant to the well-spacing laws, which order required the owner of property on which the well in question had been drilled to share the one-eighth royalty from said well with other property owners in the unit, each such owner sharing in the one-eighth royalty in the ratio that the acreage of each bore to the total acreage in the drilling unit.

In the case of *Hunter* v. *McHugh, supra,* this Court has refused to say that no constitutional order could be written under the Louisiana laws requiring lease owners to share in the cost and participate in the production derived from a well drilled in a unit, created pursuant to the spacing laws of that state.

The most recent development in the realm of conservation is found in unit operation legislation under and by virtue of which provisions are made for the unitization of

an entire gas or oil field. Such legislation provides for unitization of an entire field and its management and operation by a single operator. Such legislation is much more far-reaching in so far as its effects upon property, property rights and contractual rights, are concerned. This Court has indicated in a recent case its approval of such legislation. *Burford, et al.* v. *Sun Oil Co.*, et al., 319 U. S. 315, 321, 322.

In the opinion of this case it is also said "for these and many other reasons based on geologic realities, each oil and gas field must be regulated as a unit for conservation purposes. Compare *Railroad Commission* v. *Rowan & Nichols Co.*, 311 U. S. 570, 574. The federal government, for the present at least, has chosen to leave the principal regulatory responsibility with the States, but does supplement state control. While there is no question of the constitutional power of the State to take appropriate action to protect the industry and protect the public interest, *Ohio Oil Co.* v. *Indiana*, 177 U. S. 190; *Champlin Refining Co.* v. *Commission*, 286 U. S. 210, the state's attempts to control the flow of oil and at the same time protect the interest of the many operators have from time to time been entangled in geological-legal problems of novel nature. Texas' interests in this matter are more than that very large one of conserving gas and oil, two of our most important natural resources. It must also weigh the impact of the industry on the whole economy of the State and must consider its revenue, much of which is drawn from taxes on the industry and from mineral lands preserved for the benefit of its education and eleemosynary institutions. To prevent 'past, present, and imminent evils' in the production of natural gas, a statute was enacted 'for the protection of public and private interests against such evils by prohibiting waste and compelling ratable produc-

tion.' The primary task of attempting adjustment of these diverse interests is delegated to the Railroad Commission, which Texas has vested with 'broad discretion' in administering the law. The Commission, in cooperation with other oil producing States, has accepted state oil production quotas and has undertaken to translate the amount to be produced for the State as a whole into a specific amount for each field and for each well. These judgments are made with due regard for the factors of full utilization of the oil supply, market demand, and protection of the individual operators, as well as protection of the public interest. As an essential aspect of the control program, the State also regulates the spacing of wells."

In the instant case none of the statutes involved were enacted for the sole purpose of preventing waste. The fact that the Supreme Court of Oklahoma did not refer to or base its decision upon certain of the statutes which we here cite, does not put aside from consideration by this Court of any or all of said statutes if they be applicable to the problems involved. *Carondelet Canal and Navigation Company* v. *State of Louisiana,* 233 U. S. 362.

As we have seen, Chap. 198, Session Laws, 1913, defined the ownership of natural gas and made provisions for the reciprocal rights and obligations of its owners. Chap. 197, Session Laws, 1915, was enacted for the purpose of protecting correlative rights as well as of preventing waste, authorized and directed the Commission to make reasonable rules and regulations not only for prevention of waste, but also for the protection of correlative rights of all persons entitled to produce natural gas. In the instant case, as reflected by its basic orders, the Commission has assumed jurisdiction in the gas field involved for the twofold purpose of preventing waste and protecting correlative rights. It has made findings in its basic orders that for

the two fold purpose of preventing waste and protecting correlative rights, a system of even withdrawals of natural gas is necessary. In making provision therefor it has provided that drainage units in the field shall consist of a section of land, as in the case of Section 14, in which the Peerless well has been drilled. Having found that even withdrawals must be maintained in order to prevent waste and protect correlative rights, the order involved herein was clearly a necessary adjunct to the general plan laid down in the basic orders of the Commission.

However, as evidence of the continuing purpose of the Oklahoma Legislature to provide that the protection of correlative rights alone are sufficient to justify action by the Commission, we refer to the well spacing Act of 1935, considered in the case of *Patterson* v. *Stanolind*, *supra*, as amended by laws of 1945, which provide that "whenever the production from any common source of supply of oil or natural gas in this State can be obtained only under conditions constituting waste or drainage not compensated by counter-drainage, then any person having the right to drill into and produce from such common source of supply may, except as otherwise authorized or in this Act provided, take therefrom only such proportion of the oil or natural gas that may be produced therefrom without waste or without such drainage as the productive capacity of the well or wells of any such person considered with the acreage properly assignable to each such well bears to the total productive capacities of the wells in such common source of supply considered with the acreage properly assignable to each well therein.

"(a) To prevent and to assist in preventing the various types of waste prohibited by this Act, or any of said wastes, and to protect or assist in protecting the correlative

rights of interested parties, the Commission, by orders, rules, and regulations made in conformity with the procedural requirements of Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes, 1941, shall have the power to establish well spacing and drilling units of specified and approximately uniform size and shape for any common source of supply or prospective common source of supply in this State." (Session Laws, 1945, Title 52, sec. 4).

It was pursuant to the foregoing statute that the Commission's basic order No. 17,867 (Appendix H) was entered and orders such as involved herein are necessary adjuncts in effectuating the purposes of the basic order. Said statute recognizes and provides that the jurisdiction of the Commission may be invoked either (1) for the prevention of waste, or (2) for the protection of correlative rights. The well spacing statutes of Oklahoma were again amended by the laws of 1947, which provide; among other things, "Whenever the production from any common source of supply of oil or natural gas in this State can be obtained only under conditions constituting waste *or drainage not compensated by counter-drainage*, then any person having the right to drill into and produce from such common source of supply may, except as otherwise authorized or in this Act provided, take therefrom only such proportion of the oil or natural gas that may be produced therefrom without waste or without such drainage as the productive capacity of the well or wells of any such person considered with the acreage properly assignable to each such well bears to the total productive capacities of the wells in such common source of supply considered with the acreage properly assignable to each well therein.

"(a) To prevent or to assist in preventing the various types of waste of oil or gas prohibited by statute, or any

of said wastes, or to protect or assist in protecting the correlative rights of interested parties, the Commission, upon a proper application and notice given as hereinafter provided, and after a hearing as provided in said notice, shall have the power to establish well spacing and drilling units of specified and approximately uniform size and shape covering any common source of supply, or prospective common source of supply, of oil or gas within the State of Oklahoma."

It is thus seen that the Legislature of Oklahoma has continually and repeatedly recognized that the protection of correlative rights in the production of oil and gas is of equal importance with the prevention of waste.

In considering the statutes involved due and proper consideration should be given to the conditions involved. Natural gas is much more fugacious than oil; it cannot be stored; it cannot be transported except through pipe lines. There are few pipe line outlets in the particular field involved, yet there are many separate lease owners and, according to the evidence, more than five thousand sections of land in productive parts of the particular field involved. The conservation of natural gas and the protection of the rights of all the various owners involved are of equal importance in determining whether or not the Legislature had the power to enact and the Commission the power to enter the order which is involved herein. Either was sufficient to invoke the action of the legislature and the Commission.

The Oklahoma Legislature and the Corporation Commission have been pioneers in the field of conservation, and in the protection of correlative rights, as will appear from the decisions of this Court. The order involved was entered by the Commission after careful consideration and

we believe this Court will follow the rule which it has heretofore laid down and will not substitute its judgment for that of the Commission. *Gant* v. *City of Oklahoma City*, 289 U. S. 98; *Stanolind Oil Co.* v. *Marysville*, 279 U. S. 582; *Railroad Commission of Texas, et al.* v. *Rowan & Nichols Oil Co.*, 311 U. S. 570, 577.

There are two alternatives in the Commission's order. Republic may make a connection to the Peerless well or it may shut down its wells.

If Republic does not desire to take gas from Peerless it may shut down its wells. Counsel for Republic, in the trial of the case, admitted without qualification that the Commission could shut down the wells of Republic, in order to prevent drainage (R. 51). Republic admits in its brief that wells may be shut down for the purpose of preventing waste but not for the protection of correlative rights, (P. 21). On this point we submit that under the decision of this Court in the *Ohio* v. *Indiana, supra*, the State's prerogative to shut down producing wells was invoked for the sole purpose of protecting correlative rights and that decision is, therefore, an unequivocal answer to the contention that the wells of Republic may not be shut down in order to protect correlative rights of Peerless. The Oklahoma Commission can act either to prevent waste or to protect correlative rights.

The other alternative is that Republic may make connection to the Peerless wells on such terms and conditions as may be agreed upon between the parties and if the parties cannot agree upon such terms and conditions as may be prescribed by the Commission. In considering this provision of the order the Supreme Court of Oklahoma held that Republic was not thereby required to purchase gas from Peerless; that Republic was given a choice

between taking gas from Peerless and paying therefor direct, or marketing the gas and accounting to Peerless therefor, or of shutting in its own production from the common source of supply. It was left free to choose either of these three methods of correcting the inequality in taking and the consequent infringement of the correlative rights of Peerless.

Certainly, if the Board of Adjustment of the City of Oklahoma City can make reasonable and constitutional orders providing for the sale by non-assenting lot owners, of leases covering their property and fixing the bonus therefore, or of participating in production by sharing in the costs thereof, the Corporation Commission of the State of Oklahoma is capable of issuing a reasonable and constitutional order which would provide for reasonable contribution by Peerless to the cost of transporting the gas involved.

If the Corporation Commission of the State of Oklahoma can make an order requiring the owner of property on which a well has been drilled, within a drilling unit, to share his one-eighth royalty with other owners of property in the drilling unit, then the Commission can make a reasonable and valid order providing that Republic shall share its gathering facilities with Peerless and that Peerless shall contribute its fair and proportionate share to the cost of transporting its natural gas to market, not the market of Republic but a public market afforded by admittedly common purchasers.

If the Commissioner of Conservation of Louisiana can make a reasonable and constitutional order providing that lease owners or property owners within a drilling unit must pool their interests and share in the cost of drilling, completing and producing a well to be drilled in return

for a share in the profits to be derived from the production, such an order as involved herein can be reasonable and constitutional.

We see no reason why pipe lines are more sacred or less subject to the police powers of the State than is the oil and gas which belongs to the humblest farmer in the State of Oklahoma. If the oil and gas and rights with reference thereto of private and corporate owners are subject to the police powers of the State, then we say that pipe lines are and should be subject to the same laws and to the same extent for the same purposes.

Republic contends that the order is a burden on interstate commerce. The Supreme Court of Oklahoma has clearly demonstrated this is not true and recent decisions of this Court, we think, are conclusive that the operations involved are within the peculiar province of the State.

Republic contends that the Act or Acts involved and the order involved herein deny to Republic the equal protection of the laws. Each and all of the statutes involved, which are set out in full in the appendices of this brief, apply alike to individuals, partnerships, associations and corporations, foreign and domestic; all are required to accept the statutes involved before engaging in the business of transporting natural gas for compensation, hire or otherwise, and all are subject alike to each and all of the provisions of the statutes. There is plainly no denial of equal protection.

Republic also contends that its property will be taken and its contractual rights abrogated by the order involved. We have demonstrated by many decisions that property may be taken, when necessary, under the police powers of the State. However, we see no reason why the Commission's

order involves a taking of Republic's property. The most that could be said in this connection is that the order of the Commission constitutes *a limitation on the use of Republic's property,* in the language of the Supreme Court of Oklahoma, in the case of *Patterson* v. *Stanolind, supra.* In any event, we must assume that Republic will be properly compensated for whatever limitation is made upon the use by Republic of its property, in whatever order the Commission may hereafter make fixing the terms and conditions of the taking by Republic of the natural gas of Peerless.

Certainly Peerless does not contend it should be accorded any right unless it renders just compensation therefor. The entire controversy narrows itself down to the question of whether just regulations and orders may be entered for the purpose of protecting the correlative rights of all parties owning and having the right to produce natural gas in the field involved, or shall the law of the jungle prevail and the strong, equipped with pipe line facilities, be licensed to take the natural gas which, under the laws of the State of Oklahoma, belongs to others.

It seems to us that Republic is in poor position to complain about its property being taken when the record is without dispute that it is in fact the property of Peerless which is being taken by Republic and which Republic will continue to take unless the order of the Commission involved herein is permitted to stand. Not only are the rights of Peerless involved but the rights of each of the more than five thousand owners of property in the Guymon-Hugoton Field are involved and bound up in the final decision of this case.

Republic relies on the case of *Texhoma Natural Gas Co.* v. *Railroad Commissioner,* 59 F. (2d) 750. We have

already demonstrated that the later decision of this Court in the case of *Thompson* v. *Consolidated Gas Utilities Co., supra,* supports our position and is contrary to the position taken by Republic in this case. The *Texhoma* case must therefore give way to the opinion of this Court in the *Thompson* case. In any event, however, the *Texhoma* case is distinguishable from the instant case in the following particulars: (1) It involved contractual and property rights which had become fixed before the statute involved was enacted, whereas in the instant case the statutes involved were enacted prior to the time that any of the property or property rights involved were acquired and prior to the execution of any of the contracts involved. (2) There was in the *Texhoma* case on evidence that the order was necessary to presently protect any property owners from unnecessary drainage to the reserves of others. (3) The law of capture prevailed in Texas but does not in Oklahoma.

In a later case, *Henderson* v. *Terrell,* 24 F. Supp. 147, a three-judge Court composed of Hutchinson, Circuit Judge, and McMillan and West, district judges, passed upon a subsequently enacted statute of the State of Texas and, in passing upon a situation similar to that which we have in the instant case, upheld an order the effect of which is the same as that which is involved herein.

A still later case decided by the Supreme Court of Texas, *Corzelius* v. *Harrell,* 186 S. W. (2d) 961, also supports the position of Peerless in the instant case.

The attitude of Republic in its opposition to regulation of any kind is apparent throughout the entire record of this case; while not admitting it is a natural gas company, it contends that if it is such all of its operations are regulated under the Natural Gas Act (R. 77). For obvious reasons Republic has always sought to avoid classification

as common purchaser or as common carrier of natural gas, or as a natural gas company (R. 39). Republic contends that it is not a common carrier and a common purchaser and is not subject to regulation by the Corporation Commission of the State of Oklahoma, but if it is a common carrier and a common purchaser, it is not subject to regulation by the Corporation Commission but is subject to regulation by the Federal Power Commission (R. 40, 41). In regard to the Benedum Trees transaction, Republic spent a period of more than a year in negotiation to insure if possible that it would not be subject to the Natural Gas Act (R. 240-303 inc.). In other words, Republic does not desire to be regulated either by the Corporation Commission of the State of Oklahoma or by the Federal Power Commission.

We believe that Republic should be subject to regulation by the State with reference to those of its operations which are within the peculiar province and exclusive jurisdiction of the State. This Court has many times so held.

CONCLUSION

We respectfully conclude that Republic entered the State subsequent to the enactment of all the statutes involved, acquired its properties and made its contracts pursuant thereto, has accepted the statutes, sought and obtained benefits thereof, and should be estopped to deny their validity; that the order involves purely property and property rights, which are within the exclusive jurisdiction of the State and not subject to interference by any other sovereign; that Republic is a common carrier and a common purchaser and should be required to take natural gas

from Peerless and that aside from all other considerations, the order involved is and constitutes a valid exercise of the police power of the State for the protection of property rights and correlative rights of the owners thereof and should not be by this Court set aside.

Respectfully submitted,

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APPENDIX

APPENDIX "A"

Exhibit No.	Page Introduced	Page Printed
	Page	Page
1	54	6
2	54	13
3	54	16
4	54	14
5	54	15
6	54	55
7	68	10
8	68	11
9	83-113	296A
10	122	122A
11		
12	146-7-8	Omitted from record
13 (Same as 50)	175-224	297
14	141-142-156-158	304A
15	167-224	305
16	184-224	287-8
17	188-189-190	295
18	189-190	190
19	200	200
20	200	202
21	210	210A
22	215	216
(Consisting of 5 letters:		
(1) dated Nov. 23, 1942, Peerless by Thornton Davis to Republic		216

Exhibit No.	Page Introduced	Page Printed
(2)	dated Nov. 24, 1942, R. J. Wallace to Thornton Davis Peerless	216
(3)	dated Nov. 25, 1942, T. M. Davis, Peerless, to R. J. Wallace, Republic	217
(4)	dated Nov. 28 from Alfred Hurlburt to Thornton M. Davis Peerless Oil & Gas Co.	217
(5)	dated Nov. 30, 1942, Vernon F. Taylor to Alfred Hurlburt	218
23	143	373
24	224	224
25	224	267
26	224	268
27	224	269
28	224	270
29	224	271
30	224	272
31	224	273
32	224	274
33	224	278
34	224	280
35	224	280
36	224	281
37	224	281
38	224	282
39	224	283
40	224	282
41	224	283
42	224	284

Exhibit No.		Page Introduced	Page Printed
"		224	"
43	(Same as 16)	224	287
44		224	288
45		224	289
46		224	290
47		224	292
48		224	293
49		224	294
50	(Same as 13)	224	297
51		224	226
52		224	233
53		224	235
54		224	238A
55		224	239
56			
57		224	240
58		224	241
59			
60			
61		224	266
62			
63		224	242
64		224	247
65		224	302

APPENDIX "B"

The Revised Laws of 1910, as amended by the Laws of 1929, Chapter 44, page 56, deals with pipelines and pipeline companies: (Title 52, O.S. 1941, Sec. 1-10.)

"Any firm, co-partnership, association, or combination of individuals may become a body corporate under the laws of this state for the purpose of producing, transmitting, or transporting natural gas to points within or without this state by complying with the general corporation laws of the State of Oklahoma. (R.L. 1910, Sec. 4290; Laws 1929, Ch. 44, p. 56, § 1.)

"Foreign corporations formed for the purpose of, or engaged in the business of transporting or transmitting natural gas by means of pipelines, shall be licensed and permitted to conduct such business within this state by complying with the general corporation laws of the State of Oklahoma, and with the provisions of this article. (R.L. 1910, Sec. 4292; Laws 1929, Ch. 44, p. 56, § 2.)

"No association, combination, co-partnership or corporation shall have or exercise the right of eminent domain within this State for the purpose of constructing or maintaining a gas pipe line within this State, or shall be permitted to take private or public property for their use within this State, unless expressly granted such power in accordance with this Article. (R.L. 1910, Sec. 4293.)

"The laying, constructing, building and maintaining a gas pipe line for the transportation or transmission of natural gas along, over, under, across or through the highways, roads, bridges, streets, or alleys in this State, or of any county, city, municipal corporation or any other private or public premises within this State is hereby declared

an additional burden upon said highway, bridge, road, street or alley, and any other private, or public premises and may only be done when the right is granted by express charter from the State; and such gas pipe line shall not be constructed, maintained, or operated until all damages to adjacent owners are ascertained and paid as provided by law. (R.L. 1910, Sec. 4294.)

"All pipe lines for the transportation or transmission of natural gas in this State shall be laid under the direction and inspection of proper persons skilled in such business to be designated by the chief mine inspector for such duty, and the expense of such inspection and supervision shall be borne and paid for by the parties laying and constructing such pipe lines for the transportation or transmission of natural gas. (R.L. 1910, sec. 4295.)

"No pipe lines for the transportation or transmission of natural gas shall be laid upon private or public property when the purpose of such line is to transport or transmit gas for sale to the public until the same is properly inspected as provided in this Article, and before any gas pipe line company shall furnish or sell gas to the public, it shall secure from the inspector a certificate showing that said line is laid and constructed in accordance with this Article, and under the inspection of the proper officer: provided, that nothing in this Article shall be construed to prevent persons drilling for oil and gas from laying surface lines to transport or transmit gas to wells which are being drilled within this State: Provided, Further, that factories in this State may transport or transmit gas through pipe lines for their own use for factories located wholly within this State, upon securing the right of way from the State over or along the highways and from property owners to their lands. (R.L. 1910, sec. 4299.)

"No person, firm or association or corporation shall ever be permitted to transmit or transport

natural gas by pipe lines in this State or in this State construct or operate a pipe line for the transmission of natural gas, except such persons, firms, associations, or corporations be incorporated as in this Article, provided, except as provided in the preceding section. (R.L. 1910, sec. 4300.)

"Before any gas pipe line corporation shall acquire any right of way, or exercise the right of eminent domain within this State, or construct any pipe lines for the transportation of gas, it shall file in the office of the Corporation Commission a plat showing in detail the points in this State between which, and the route along which its trunk line is proposed to be constructed, the intended size and capacity, thereof, and the location and capacity of all pumping stations, gate valves, check valves and connections of all kinds on said trunk lines; and upon the demand of the corporation commission, it shall file a plat showing, in detail all the lines owned or operated by it, with full information as to their capacity and size, location and capacity of its pumping station, gate valves, check valves and connections of all kinds in existence. (R.L. 1910, § 4301.)

"All domestic gas pipe line corporations in this State are hereby authorized to build and operate, and for that purpose to acquire, whether by purchase or the exercise of eminent domain, sites for the erection of pumping stations in this State wherever the same may be necessary, due consideration being had for the size, capacity, pressure, facilities and powers of all other gas pipe line corporations and gas consumers and gas producers, in the same gas district which may be affected by the use of said pumps. (R.L. 1910, § 4302.)

"Every gas pipe line corporation or individual in this state is hereby given authority to build, construct and maintain gas pipe lines, over, under, across or through all highways, bridges, streets, or

alleys in this State, or any public place therein, under the supervision of the inspector of oil and gas as to where and how in said highways, bridges, streets, alleys and public places said pipe lines shall be laid, subject to the control of the local municipalities as to how the business of distribution in that municipality shall be conducted, and subject to responsibilities as otherwise provided by law; provided, however, that whenever any gas pipe line crosses the land or premises of any one outside of a municipality, said corporation shall, by request of the owner of said premises, connect said premises with a pipe line and furnish gas to said consumer at the same rate as charged in the nearest city or town. (R.L. 1910, § 4303, Laws 1929, ch. 44, p. 56 § 3.)"

APPENDIX "C"

Next in chronological order in Chapter 99, Session Laws 1913, page 166, which provides as follows:

"Chapter 99

"NATURAL GAS—REGULATION OF PRODUCTION AND TRANSPORTATION

"House Bill No. 723

"AN ACT to regulate corporations, associations, and persons engaged in this state, in the business of carrying natural gas through pipe lines; to regulate operators of gas wells, regulating the purchase of natural gas by pipe lines, providing punishment for violations thereof, conferring jurisdictions in the Corporation Commission for enforcement of the provisions of this act, and declaring an emergency. BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

"Businesses and persons subject to the act—vested rights excepted.

"Section 1. Every corporation, joint stock company, limited co-partnership, partnership or other person, now, or hereafter exercising or claiming the right to carry or transport natural gas by or through pipe line or lines, for hire, compensation or otherwise, or now or hereafter exercising or claiming the right to engage in the business of producing, piping or transporting natural gas, or any other person or persons, now or hereafter engaging in the business of buying, selling in or transporting natural gas within the limits of this state, shall not have or possess the right to conduct or engage in said business or operations, in whole or in part, as above described, or have or possess the right to locate, maintain, or operate the necessary pipe lines, fixtures and equipment thereto belonging, or use

in connection therewith, concerning the said business of carrying or transporting natural gas as aforesaid, on, over, along, across, through, in or under any present or future highway, or part thereof, within the state, or to have or possess the right of eminent domain, or any other right or rights, concerning said business or operation, in whole or in part, except as authorized by and subject to the provisions of this act, except, further, and only such right or rights as may already exist which are valid, vested and incapable of revocation by any law of this state or of the United States: (Title 52, Sec. 21, O. S. 1941.)

"Pipe line right-of-way—eminent domain—highways.

"Section 2. For the purpose of acquiring necessary right-of-way, every such person is hereby granted the right of condemnation by eminent domain, and in the use of the highways in this state, for the purpose of transporting natural gas by pipe lines, and the location, laying, constructing, maintaining and operations thereof. (Title 52, Sec. 22, O. S. 1941.)

"Pipe line operators common purchasers—requirements—exemptions.

"Section 3. Every corporation, joint stock company, limited co-partnership, partnership or other person, now or hereafter claiming or exercising the right to carry or transport natural gas by pipe line or pipe lines, for hire, compensation, or otherwise, within the limits of this state, is allowed by, and upon compliance with the requirements of this act, as owner, lessee, licensee, or by virtue of any other right or claim, which is now engaged or hereafter shall engage in the business of purchasing natural gas shall be a common purchaser thereof, and shall purchase all the natural gas in the vicinity of, or which may be reasonably reached by its pipe lines, or gathering branches, without discrimination in

favor of one producer or one person as against another, and shall fully perform all the duties of a common purchaser; but if it shall be unable to perform the same, or be legally excused from purchasing and transporting all the natural gas produced or offered, then it shall purchase and transport natural gas from each person or producer ratably, in proportion to the average production, and such common purchasers are hereby expressly prohibited from discriminating in price or amount for like grades of natural gas or facilities as between producers or persons; and in the event it is likewise a producer, it is hereby prohibited from discrimination in favor of its own production, or production in which it may be interested directly or indirectly in whole or in part, and its own production shall be treated as that of any other person or producer. All persons, firms, associations, and corporation are exempted from the provisions of this act, except from the provisions of section (9) nine hereof, where the nature and extent of their business is such that the public needs no use in the same, and the conduct of the same is not a matter of public consequence, and for this purpose the district courts of the state and the Corporation Commission are hereby vested with jurisdiction to determine such exemptions in any action or proceeding properly before them, and provided by the laws now in force in this state regulating the purchase and transporta- of oil. Sec. 23, O. S. 1941, Title 52.

"Pipe line operators to be common carriers—obligations—exemptions.

"Section 4. *Every corporation, joint stock company, limited co-partnership, partnership or other person now or hereafter engaged in the business of carrying or transporting natural gas for hire, for compensation or otherwise, by pipe line or pipe lines,* within this state, and by virtue of and in conformity to, any valid law incapable of revocation by any law of this state or of the United States, or

by virtue of and in conformity to the provisions of this act, *shall be a common carrier thereof as at common law*, and no such common carrier shall allow or be guilty of any unjust or any unlawful discrimination, directly or indirectly, in favor of the carriage, transportation or delivery of any natural gas, offered to it, in its possession or control, or in which it may be interested, directly or indirectly. Provided, that any municipality now owning or operating a gas pipe line for the purpose of furnishing gas for said municipality and now under contract with any person, firm or corporation to furnish it gas, shall be exempted from the provisions of this section during the life of said contract, or until changed or abrogated by the parties thereto. And, provided further, that any person, firm or corporation owning or operating a gas pipe line within the limits of any incorporated city or town in this state shall be exempted from the provisions of this section only as to its distributing lines located wholly within the corporate limits of said city or town. (Sec. 24, Title 52.)

"Non-compliance with act made unlawful—effect.

"Section 5. *It shall be unlawful for any corporation, joint stock company, limited co-partnership, partnership or other person, now or hereafter engaged in the business of carrying or transporting natural gas for hire or compensation or otherwise, within the limits of this act and not becoming a common purchaser as defined by, and accepting the provisions of this act, to own or operate, directly or indirectly any gas well or wells, gas leases, or gas holdings or interests in this state, after six months next after the approval of this act, and each and every of said corporations, joint stock company, limited co-partnership, partnership or other persons shall divest themselves of all legal or equitable ownership, interest or control, directly or indirectly,*

in gas well or wells, gas leases or gas holdings or interest in this state. (Sec. 25, Title 52.)

"Prerequisite to carrying gas—records for Corporation Commission.

"Section 6. Before any corporation, joint stock company, limited co-partnership, partnership or other persons shall have, possess, enjoy or exercise the right of eminent domain right-of-way, right to locate, maintain or operate pipe lines, fixtures or equipment thereunto belonging, or used in connection therewith, as authorized by the provisions of this act, or shall have, possess, enjoy or exercise any right (the word 'right' in this connection being used in its most comprehensive legal sense) conferred by this act, every such corporation, joint stock company, limited co-partnership, partnership or other person, shall file in the office of said Corporation Commission proper and explicit authorized acceptance of the provisions of this act and the Constitution of this state, in cases of pipe lines a plat showing in detail the points within this state between which, and the route along which the trunk lines are proposed to be constructed, the intended size and capacity thereof, and the location and capacity of all pumping stations, gate valves, check valves and connections and appliances of all kinds used, or to be used, on said trunk or lines; and upon demand of the Corporation Commission the proper party or parties, as required by said commission, shall properly file a plat showing in detail all the lines owned and operated by them respectively, with full and explicit information as to their capacity, size and location, and the capacity of their pumping stations, gate valves, check valves and connections of all kinds, respectively, required or used in the operation thereof. (Sec. 26, Title 52.)

"Right-of-way—highways—eminent domain.

"Section 7. Every domestic pipe line company in this state is hereby given authority to build,

construct, lay, and maintain gas pipe lines, over, under, across or through all highways, bridges, streets or alleys in this state or any public place under the supervision of the Corporation Commission as to where and how in said highways, bridges, streets, alleys and public places said pipe lines shall be laid. Provided the right to lay gas pipe lines in cities shall be acquired as now provided by law, and subject to the responsibility as otherwise provided by law for any negligent injury thereby caused. All persons, natural or artificial, except foreign corporations, shall have the right of eminent domain, and any right or privilege hereby conferred, when necessary to make effective the purposes of this act and the rights thereby conferred. Foreign corporations organized under the laws of any other state or territory, or the United States, and doing or proposing to do business in this state, and which shall have become a body corporate pursuant to or in accordance with the laws of this state, and which, as hereby provided, shall have registered its acceptance of the terms hereof, shall receive all the benefits of this act provided. (Sec. 27, Title 52.)

"Filing records with Corporation Commission—extension of time.

"Section 8. Upon a sworn statement of the necessities which would justify a judicial continuance, the Corporation Commission is authorized to extend the time for the filing of the said plats, not, however, to exceed 60 days. (Sec. 28, Title 52.)

"Only 25 per cent of capacity of gas wells to be taken.

"Section 9. Every corporation, joint stock company, limited co-partnership, partnership or other person now or hereafter claiming or exercising the right to produce natural gas, or to carry or to transport natural gas through pipe line or pipe lines, for hire, compensation, or otherwise within the limits of this state, is allowed by, and upon compliance

with the requirements of this act, as owner, lessee, licensee, or by virtue of any other right or claim, is hereby prohibited from taking more than twenty-five (25) per cent of the daily natural flow of any gas well or wells unless for good cause shown, under the exigencies of the particular case the Corporation Commission shall establish a different per centum under the prescribed rules and regulations therefor. (Sec. 29, Title 52.)

"Meters—requirements.

"Section 10. No corporation, joint stock company, limited co-partnership, partnership or person doing business under the provisions of this act shall purchase, collect, transport, convey or sell any gas from any wells in this state except such gas as is run through properly constructed meters, the daily readings of which shall be carefully and accurately taken every twenty-four hours (24), and of which a true and correct report under oath shall be made every month and which report of all such business transacted during the next preceding month shall be filed not later than the fifteenth (15th) day of each and every month with the Corporation Commission and which report shall at all times be open to the inspection of the public. Such report shall be based upon such daily meter readings; shall show the amount of gas run or purchased from each tract of lands; lease or leasehold estate, the names of the seller or sellers of such gas and of the purchaser or purchasers thereof; and any person or persons making or directing, counselling, advising, aiding or abeting in the making or filing of any false report in the premises shall be deemed guilty of perjury, and on conviction thereof be punished as provided by law; and to the end that such meters shall be properly constructed, maintained, repaired and operated, their installation, use and operation shall at all times be subject to such rules and regulations as the Corporation Commission may prescribe. (Sec. 30, Title 52.)

"Violation of act—punishment.

"Section 11. Any person, co-partnership or corporation, its agent or employees, violating any of the provisions of this act, or any order of a court of competent jurisdiction of this state, or the Corporation Commission, pursuant to the jurisdiction conferred by this act, shall, upon conviction thereof, be fined a sum of not less than one thousand dollars ($1,000.00), nor more than five thousand dollars ($5,000.00), or imprisonment not less than six months, nor more than one year, or by both such fine and imprisonment for each and every violation of this act; but in case the monthly runs or takings or transportation of gas shall average so as to be without discrimination, as herein provided, a transaction or transactions of any particular day or week or portion of a month shall be disregarded; and the court of competent jurisdiction of the county in which the omission or commission, which is in violation of this act, has occurred, shall have jurisdiction of an action under the Penal Code for the punishment thereof; and that said penalties shall not be exclusive of civil liability. (Sec. 31, Title 52.)

"Violations—receivership—procedure.

"Section 12. The Corporation Commission shall, upon being reasonably satisfied that any corporation has violated the provisions of this act, recommend to the Attorney General that a receiver be appointed for such corporation. Upon receipt of the recommendation by the Attorney General, he shall within ten days file a petition on behalf of the state in any court of competent jurisdiction, praying that a receiver be appointed, and such court shall immediately consider the application and appoint a receiver, if in the judgment of the court the provisions of this act have been willfully violated. The receiver, when appointed, shall immediately take charge of all the business, property and assets of such corporation in the state, and shall retain possession thereof

until it shall be determined upon the trial whether or not such corporation has violated the provisions of this act, then, in addition to the other penalties herein provided, all the property of said corporation shall be retained under such receivership until the penalties incurred hereunder are paid, after which the receivership may be discharged upon such terms and conditions as the court may impose as an assurance for the further compliance with this act. (Sec. 32, Title 52.)

"Evidence—reports of gas companies.

"Section 13. A properly certified transcript of the report of any such corporation, association, or person, shall, as against the makers thereof, be prima facie evidence of the truth of any matter therein contained. (Sec. 33, Title 52.)

"Enforcement by Corporation Commission—appeals.

"Section 14. The Corporation Commission is hereby authorized and empowered to enforce all the provisions of this act, including the employment of requisite help and gas experts to carry out the same, except where jurisdiction is conferred on some other branch of the state government by the Constitution of this state; appeals may be allowed from the decision of the Commission to the Supreme Court as now provided by law for appeals in other cases. (Sec. 34, Title 52.)

"Extension of time for operation of act.

"Section 15. For good cause shown, the Corporation Commission is authorized to extend the time within which this act shall operate as to any particular corporation, association or person not to exceed nine months after the same became effective. (Sec. 35, Title 52.)

"Emergency.

"Section 16. For the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall be in force and effect from and after its passage and approval.

"Approved March 26, 1913."

APPENDIX "D"

Chapter 198, Session Laws of 1913, has reference to natural gas and deals primarily with ownership of natural gas and ratable taking thereof. This act deals primarily with the prevention of drainage. It is as follows:

"Chapter 198

"NATURAL GAS—OWNERSHIP DEFINED AND OUTPUT RESTRICTED

"Senate Bill No. 130.

"AN ACT defining ownership of natural gas, providing for the taking of same and making it la - ceny to take natural gas except as herein provided.

"BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

"Ownership defined.

"Section 1. All natural gas under the surface of any land in this state is hereby declared to be and is the property of the owners, or gas lessees, of the surface under which gas is located in its original state. Sec. 231, Title 52, O. S. 1941.

"Rights of owners—restrictions on output.

"Section 2. Any owner, or oil and gas lessee, of the surface, having the right to drill for gas shall have the right to sink a well to the natural gas underneath the same and to take gas therefrom until the gas under such surface is exhausted. In case other parties, having the right to drill into the common reservoir of gas, drill a well or wells into the same, then the amount of gas each owner may take therefrom shall be proportionate to the natural flow of his well or wells to the natural flow of the well or wells of such other owners of the same common source of supply of gas, such natural flow

to be determined by any standard measurement at the beginning of each calendar month; provided, that not more than twenty-five per cent of the natural flow of any well shall be taken, unless for good cause shown, and upon notice and hearing the Corporation Commission may, by proper order, permit the taking of a greater amount. The drilling of a gas well or wells by any owner or lessee of the surface shall be regarded as reducing to possession his share of such gas as is shown by his well. Sec. 232, Title 52, O. S. 1941.

"Purchasers of output—prices and amounts of gas to be taken.

"Section 3. Any person, firm or corporation, taking gas from a gas field, except for purposes of developing a gas or oil field, and operating oil wells, and for the purpose of his own domestic use, shall take ratably from each owner of the gas in proportion to his interest in such gas, upon such terms as may be agreed upon between said owners and the party taking such, or in case they cannot agree at such a price and upon such terms as may be fixed by the Corporation Commission after notice and hearing; provided, that each owner shall be required to deliver his gas to a common point of delivery on or adjacent to the surface overlying such gas. Sec. 233, Title 52, O. S. 1941.

"Taking more than share of gas—damages and penalties.

"Section 4. Any person, firm or corporation, taking more than his or its proportionate share of such gas, in violation of the provisions of this act, shall be liable to any adjoining well owner for all damages sustained thereby and subject to a penalty for each violation not to exceed five hundred dollars ($500.00), and each day such violation is continued shall be a separate offense. Sec. 234, Title 52, O. S. 1941.

"Violations of act—puniishment.

"Section 5. Any person or agent of a corporation, who takes gas, or aids or abets in the taking of gas, except as herein provided, either directly or indirectly, as an individual, officer, agent, or employee of any corporation, shall be guilty of grand larceny, and, upon conviction thereof, shall be sentenced to the penitentiary not to exceed five (5) years. Sec. 235, Title 52, O. S. 1941.

"Approved May 16, 1913."

APPENDIX "E"

The next statute, having reference to natural gas, is hapter 197, page 398, Session Laws of 1915. This act als primarily with waste or the prevention thereof rough conservation measures. This act is as follows:

"Chapter 197

NATURAL GAS—WASTE

"AN ACT to conserve natural gas in the state of Oklahoma, to prevent waste thereof, providing for the equitable taking and purchase of same, conferring authority on the Corporation Commission, prescribing a penalty for violation of this act, repealing certain acts, and declaring an emergency.

"BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

"Waste Prohibited.

"Section 1. That the production of natural gas in the State of Oklahoma, in such manner, and under such conditions as to constitute waste, shall be unlawful. Sec. 236, Title 52, O. S. 1941.

"Waste defined.

"Section 2. That the term waste, as used herein in addition to its ordinary meaning, shall include escape of natural gas in commercial quantities into the open air, the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities, underground waste, the permitting of any natural gas well to wastefully burn and the wasteful utilization of such gas. Section 237, Title 52, O. S. 1941.

"Conservation of Gas.

"Section 3. That whenever natural gas in commercial quantities, or a gas bearing stratum, known

to contain natural gas in such quantity, is encountered in any well drilled for oil or gas in this state, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters. Any unrestricted flow of natural gas in excess of two million cubic feet per twenty-four hours shall be considered a commercial quantity thereof; provided, that if in the opinion of the Corporation Commission, gas of a lesser quantity shall be of commercial value, said Commission shall have authority to require the conservation of said gas in accordance with the provisions of this act; and provided, further, the gauge of the capacity of any gas well shall not be taken until such well has been allowed an open flow for the period of three days. Sec. 238, Title 52, O. S. 1941.

"Excess Gas Supply—Apportionment.

"Section 4. That whenever the full production from any common source of supply of natural gas in this state is in excess of the market demands, then any person, firm or corporation, having the right to drill into and produce gas from any such common source of supply, may take therefrom only such proportion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. *The said commission is authorized and directed to prescribe rules and regulations for the determination of the natural flow of any such well or wells, and to regulate the taking of*

natural gas from any or all such common sources of supply within the state, so as to prevent waste, protect the interests of the public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another. Sec. 239, Title 52, O. S. 1941.

" 'Common Purchaser'—Fair Treatment.

"Section 5. That every person, firm or corporation, now or hereafter engaged in the business of purchasing and selling natural gas in this state, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another, save as authorized by the Corporation Commission after due notice and hearing; but if any such person, firm or corporation, shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. It shall be unlawful for any such common purchaser to discriminate between like grades and pressures of natural gas, or in favor of its own production, or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion that such production bears to the total production available for marketing. The Corporation Commission shall have authority to make regulations for the delivery, metering and equitable purchasing and taking of all such gas and shall have authority to relieve any such common purchaser, after due notice and hearing, from the duty of purchasing gas of an inferior quality or grade. Sec. 240, Title 52, O. S. 1941.

"Hearings before Corporation Commission—How Conducted.

"Section 6. That any person, firm or corporation, or the Attorney General, on behalf of this state may institute proceedings before the Corporation Commission, or apply for a hearing before said commission, upon any question relating to the enforcement of this act; and jurisdiction is hereby conferred upon said commission to hear and determine the same, said commission shall set a time and place when such hearings shall be had and give reasonable notice thereof to all persons or classes interested therein by publication in some newspaper or newspapers having general circulation in the state, and shall in addition thereto cause notice to be served in writing upon any person, firm or corporation, complained against in the manner now provided by law for serving summons in civil actions. In the exercise and enforcement of such jurisdiction, said commission is authorized to summon witnesses, make ancillary order, and use such mesne and final process including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporation as now provided by law. Sec. 241, Title 52, O. S. 1941.

"Appeals to Supreme Court.

"Section 7. That appellate jurisdiction is hereby conferred upon the Supreme Court of this state to review the orders of said commission made under this act. Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from, may be superseded by the commission or by the Supreme Court upon such terms and conditions as may be just and equitable. Sec. 242, Title 52, O. S. 1941.

"Power of Corporation Commission—Rules and Regulations.

"Section 8. That the Corporation Commission shall have authority to make regulations for the prevention of waste of natural gas, and for the protection of all natural gas, fresh water, and oil bearing strata encountered in any well drilled for oil or natural gas, and to make such other rules and regulations, and to employ or appoint such agents, with the consent of the Governor, as may be necessary to enforce this act. Sec. 243, Title 52, O.S. 1941.

"Acceptance by Pipe Lines.

"Section 9. *Before any person, firm or corporation shall have, possess, enjoy or exercise the right of eminent domain, right of way, right to locate, maintain, construct or operate pipe lines, fixtures, or equipment belonging thereto or used in connection therewith, for the carrying or transportation of natural gas, whether for hire or otherwise, or shall have the right to engage in the business of purchasing, piping, or transporting natural gas, as a public service, or otherwise, such person, firm or corporation, shall file in the office of the Corporation Commission a proper and explicit authorized acceptance of the provisions of this act.* Sec. 244, Title 52, O. S. 1941.

"Duties of Mine Inspector Unchanged.

"Section 10. That nothing contained in this act shall be construed to interfere with any duties now imposed by law upon the Chief Mine Inspector of the state or his deputies. Sec. 245, Title 52, O. S. 1941.

"Validity of Several Sections of Act Independent.

"Section 11. That the invalidity of any section, subdivision, clause, or sentence of this act shall not in any manner affect the validity of the remaining portion thereof. Sec. 245, Title 52, O. S. 1941.

"Penalties for Violation.

"Section 12. That in addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00) or by imprisonment in the county jail not to exceed thirty (30) days, or by both such fine and imprisonment, Sec. 246, Title 52, O. S. 1941.

"Emergency.

"Section 13. For the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in force from and after its passage and approval.

APPENDIX "F"

Chapter 93, Session Laws of 1913, now carried as Section 151 to 155, inclusive, of Title 17, O. S. 1941, is as follows:

"Section 151. Public Utility — Definition— Washington County, Special Provisions Relating To

"The term 'Public Utility' as used in this Act, shall be taken to mean and include every corporation, association, company, individuals, their trustees, lessees, or receivers, successors or assigns, except as hereinafter provided, and except cities, towns, or other bodies politic, that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, direct or indirectly, for public use, or may supply any commodity to be furnished to the public.

"(a) For the conveyance of gas by pipe line.

"(b) For the production, transmission, delivery or furnishing of heat or light with gas.

"(c) For the production, transmission, delivery or furnishing electric current for light, heat or power.

"(d) For the transportation, delivery or furnishing of water for domestic purposes or for power. The term 'Commission' shall be taken to mean Corporation Commission of Oklahoma.

"Provided, that, in Washington County, where any corporation, association, company, individuals, their trustees, lessees, or receivers, successors or assigns, is engaged in the private business of manufactoring any product other than those hereinbefore defined, and in the manufacture of such products operate and maintain private electric or water plants for its own power and electrical energy

or water used in its manufacturing plant, without the right to eminent domain and without the use of streets, highways or public property, it may contract upon terms and prices approved by Corporation Commission the sale of a bona fide surplus of electrical energy or water developed in such private plants to any public utility engaged in manufacturing and distributing electrical energy in Washington County, Oklahoma, without becoming a public utility. Provided, the purpose of this Act is in no way to affect the general application of Section 3462 of Compiled Oklahoma Statutes, 1921, to other than Washington County; and in case this Act shall be held to be unconstitutional by the Supreme Court then it is the declared intention of this Act to in no wise affect said Section 3462. (Laws 1913, ch. 93, p. 150, sec. 1; Laws 1929, ch. 353, p. 487, sec. 1.)

"Section 152. Commission's jurisdiction over public utilities.

"The Commission shall have general supervision over all public utilities, with power to fix and establish rates and to prescribe rules, requirements and regulations, affecting their services, operation, and the management and conduct of their business; shall inquire into the management of the business thereof, and the method in which same is conducted. It shall have full visitorial and inquisitorial power to examine such public utilities, and keep informed as to their general conditions, their capitalization, rates, plans, equipments, apparatus, and other property owned, leased, controlled or operated, the value of same, the management, conduct operation, practices and services; not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with the provisions of this act, and with the Constitution and laws of this state, and with the orders of the Commission. (Laws 1913, ch. 93, p. 150, sec. 2.)

"Section 153. Implied and incidental powers of Commission—Contempt.

"In addition to the powers enumerated, specified, mentioned, or indicated in this act, the Commission shall have all additional implied and incidental powers which may be proper and necessary to carry out, perform and execute all powers herein enumerated, specified, mentioned, or indicated, and to punish as for contempt such corporation, association, company or individual, their trustees, lessees, receivers, successors and assigns, for the disobedience of its orders in the manner provided for punishment of transportation and transmission companies, by the Constitution and laws of this state. (Laws 1913, ch. 93, p. 151, sec. 3.)

"Section 154. Records of public utility business.

"In case of the owner or operator of any public utility is engaged in carrying on any other business in connection with the operation of such public utility, the Commission may require the cost of the operation and gross revenues of such joint business to be kept in such form and manner as may be prescribed by the Commission so that the cost of the operation and gross revenues of the public utility may be ascertained. (Laws 1913, ch. 93, p. 151, sec. 4.)

"Section 155. Orders and rules of Commission—Scope—Right of Appeal.

"The Commission may, from time to time, adopt or promulgate, such orders, rules, regulations or requirements, relative to investigations, inspections, tests, audits, and valuations of the plants and properties relative to inspection and tests of meters as in its judgment may be necessary and proper; provided, that under the provisions of this act, any public utility, corporation, association, company, individual, their trustees, lessees or receivers, successors or assigns, may appeal from any order or

finding or judgment of the Corporation Commission as provided by law in cases tried and heard before said Commission of transportation and transmission companies. (Laws 1913, ch. 93, p. 152, sec. 5.)

APPENDIX "C"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF WALKER T. POUND, CONSERVATION OFFICER, FOR RULES AND REGULATIONS GOVERNING THE RATABLE TAKING OF GAS AND ALLOCATING THE PRODUCTION IN THE HUGOTON GAS FIELD IN TEXAS COUNTY, OKLAHOMA	CAUSE CD No. 861 ORDER No. 17410

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, originally on the 1st day of October, 1943, at 10 o'clock, A.M., upon the application filed by the Conservation Officer and pursuant to an order of the Commission setting the same for hearing and notice published as required by law; at which time the Conservation Officer and Conservation Attorney appeared, and various operators, producers, and purchasers of gas, and others interested in the Hugoton Gas Field, were present; whereupon evidence was presented, which the Commission considered as supplementary to evidence introduced in the various hearings in Cause CD No. 817 pursuant to which Order No. 16377 was issued on the 5th day of May, 1943; and the

Commission closed the cause and took the matter under advisement.

Thereafter this cause was reopened upon an amended application filed by the Conservation Officer, and pursuant to an order of the Commission setting the same for hearing and notice published according to law, came on for hearing before the Commission on the 27th day of July, 1944, at 1:30 o'clock, P.M., at which time the Conservation Officer and Conservation Attorney appeared, and various operators, producers, and purchasers of gas appeared, and others interested in the Hugoton Field were present, whereupon additional testimony was heard, and all of the testimony introduced in the hearings heretofore held was taken into consideration; and the Commission closed the cause and again took the matter under advisement.

Now, on this 27th day of December, 1944, the Commission, having considered all of the testimony taken in all of the hearings on the Hugoton Field, and being otherwise fully advised in the premises, finds as follows.

FINDINGS

1. That notice by publication of the filing of the amended application herein, the time and place of the hearing thereon, and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of the parties interested therein, and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That heretofore and on the 5th day of May, 1943, the Commission promulgated its Order No. 16377 in Cause

CD No. 817, establishing rules and regulations governing the production of natural gas in the Hugoton Field in order to prevent waste, provide for ratable taking, and fixing allowables of wells so that production and distribution in said field would be fair and equitable; that said Order No. 16377 should be rescinded and superseded by this order.

3. That there exists in Texas County, Oklahoma, a large gas field known as the Hugoton Field, which extends from the Kansas line on the north to the Texas line on the south, and approximately forty miles east and west; that said field extends north into the State of Kansas, and at least a short distance south into the State of Texas; that the probable productive area in said field in the State of Oklahoma covers most of Texas County, but the exact boundaries and extent thereof cannot be determined with certainty until additional wells are drilled.

4. That the first gas well in said area was drilled in 1922, but development of the field has been very slow owing to lack of market until about the time of the issuance of said Order No. 16377; that at said time only 55 wells had been drilled, many of which had no pipeline connection or other market outlet, and had never sold any gas; that at the present time there are more than 100 wells which are principally owned by the following companies: Republic Natural Gas Company, Cities Service Gas Company, Wilcox Oil & Gas Company, Cabot Carbon Companies, Peerless Oil and Gas Company, Southwestern Public Service Company, Hagy, Harrington and Marsh, Allison and Sturdevant, Home Development Company, and Phillips Petroleum Company, and perhaps others; that Skelly Oil Company and the Panhandle Eastern Pipe Line Company as well as all the other companies above named

and perhaps others all own large undeveloped acreage in said field; that many wells are being drilled in the field; that some of the wells have not yet had a pipeline connection and have never sold any gas up to this time; that some of said wells are supplying gas to the General Atlas Carbon Company and Cabot Carbon Company for use in the manufacture of a product commonly called furnace carbon black, and to supply the city of Guymon and other small municipalities in that vicinity; that a small part of the gas is being taken by the Panhandle Eastern Pipe Line Company and shipped to markets outside of the State of Oklahoma; that Cities Service Gas Company has a large pipeline extending from the field to Blackwell, Oklahoma, where it connects with other pipelines belonging to it and distributes gas in Oklahoma and outside of the State; that Republic Natural Gas Company is producing gas from its wells and transporting the same by its pipeline to a common point near Hugoton, Kansas, where it is sold to the Northern Natural Gas Company and shipped to consumers principally in the States of Iowa and Minnesota, and said Republic Natural Gas Company is also selling gas to Cities Service and has a connection to its pipeline.

5. That there appears to be no uniform price for gas in said area; that some of the purchasers were paying two cents at the time of the original hearing in this cause and there is no evidence to show that this price has been changed; that other companies, such as Republic Natural Gas Company, are paying on the basis of five cents per thousand cubic feet at the well to the royalty owners, and Republic is selling its gas under a contract with Northern Natural Gas Company in Kansas at six cents per thousands; that the price paid by Cities Service Gas Company is not shown in the record.

6. That the common source of supply of gas in said field is found at approximately 2600 to 2900 feet, and the average thickness of the producing formation is 40 to 45 feet; that there appear to be several separate horizons, although the evidence discloses that these are only breaks in the formation and the whole producing formation constitutes one common source of supply; that the original shut-in pressure of said wells is approximately 450 pounds per square inch, and there has been some decline in pressure since the first well was brought on to production.

7. That from present available information it appears that the Hugoton Gas Field is one of the largest and most important gas fields in the State of Oklahoma, with total reserves of approximately nine trillion cubic feet.

8. That there are several pipelines extending from the Texas Panhandle across Texas County and into the State of Kansas, which are not connected with any of the producing gas wells in Oklahoma; that a large part of the gas which is being consumed from that general area in which the Hugoton Field is located is being produced from that part of the Hugoto Field located in Kansas or from the Texas Panhandle, although much of the gas produced in the Texas Panhandle may be from a different common source of supply than that in Texas County.

9. That pressure differentials exist to some extent between the wells and leases in said field, which appears to be due primarily to the fact that some wells have been produced for a longer period and have produced more gas than others, which shows that there is some migration of gas from some leases to others, and unless action is taken by the Commission the differentials will increase and cause inequities due to drainage, and waste will result. It is of

common knowledge that gas in a formation migrates toward the wells that are on production and have the lowest pressure, and that drainage thus caused, which is not equalized by counterdrainage from other properties, results in disproportionate production by the wells on the respective properties.

10. That from production gauges made in said field it appears that the daily protential capacity of the individual wells varies from 4,000,000 to 50,000,000 cubic feet; that the Commission in Order No. 16377 adopted a method for determining the natural flow of wells, which was called deliverability; that since that time deliverability tests have been made on many of the wells in said field, but said tests were not made in exact accordance with said Order No. 16377, but were made in accordance with the provisions of this order as hereinafter specifically set out, and that there is now being taken tests made as specifically provided for herein.

11. That the full production of gas from wells in said field is greatly in excess of the market demand and of the transportation and marketing facilities.

12. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas and prohibiting the waste thereof, and authorizing and directing the Corporation Commission to promulgate rules and regulations for determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide for ratable taking, and protect the interests of the public and all those having a right to produce therefrom; and the Commission was therein authorized and directed to give due regard to the acreage drained by each well in determining the

amount of gas that should be produced from any common source of supply and fixing well allowables; such rules and regulations to give to each owner or lessee an opportunity to produce as nearly as possible all of the natural gas located in its original state under the property owned by him, and permit him to produce it ratably with other persons having an interest therein and wells located thereon; that in the years 1933 and 1935 the Legislature enacted additional statutes which pertain principally to oil production, but in general providing that production of oil and gas in such manner as to constitute waste is prohibited, and authorizing and directing the Corporation Commission to make and promulgate rules and regulations for the prevention of such waste.

13. That pursuant to said statutes the Corporation Commission in the year 1916 adopted general rules and regulations providing for the taking of potentials and for ratable taking of gas, which were and are applicable to all gas fields in this state, and have been amended in only a few particulars since that time; that said rules and regulations do not establish a method for determining the natural flow of the wells and do not take into consideration the acreage drained by said wells, and are generally insufficient to carry out the objects of the laws of the State of Oklahoma as to gas production from said Hugoton Field.

14. That it is necessary to amend the general rules and regulations and adopt and promulgate additional rules for the production of gas from the Hugoton Field in order to prevent waste, insure ratable taking, protect the interests of the public and all parties interested therein, to prevent any lessee from securing an unfair proportion of the gas in said field, and to give to each lessee and royalty owner an opportunity to recover the gas originally underlying the surface of the land owned by him.

15. That the allocation formula hereinafter set out in this order should be adopted by the Commission to permit each well to currently produce its ratable share of the gas and ultimately to produce the approximate amount originally underlying the lease, to protect the interests of the public and of all parties interested therein, and prevent waste; that in such formula many factors are considered, such as natural flow, acreage, pressures, porosity, permeability, and thickness of the formation, of which acreage and natural flow are the most important; that in determining the ability of a well to put gas into a pipeline against pipeline pressure, which is known as deliverability, natural flow, pressure, porosity, permeability, and thickness of the formation should be considered.

16. That it appears that one well in said field will adequately drain 640 acres without waste; that all wells heretofore drilled have been in one section as laid out by the governmental survey, and there is no such section that has more than one well, but the acreage communitized for the drilling of such wells has not been in all instances all within one section, nor are the wells heretofore drilled all located in the approximate center of a section; that since the promulgation of Order No. 16377 all wells have been drilled on communitized leases entirely within one section according to the governmental survey, with the well in the approximate center thereof; that except as otherwise specificially provided all units should contain not to exceed 640 acres all within one section as determined by the United States Governmental Survey and each well should be located as nearly as practicable in the center of a unit, unless otherwise specifically ordered by the Commission; that the acreage factor for the purposes of the allocation formula should be not to exceed 640 acres all within one governmental section with the well in the approximate

center thereof unless otherwise specifically ordered by the Commission.

17. That the deliverability factor, hereinafter set out in this order, which takes into consideration the natural flow of wells, porosity, permeability, pressures, thickness of formation, and other factors, should be adopted in making allocations to wells in the field.

18. That the establishment of the acreage and deliverability factors, as hereinafter set out in this order, is necessary for determination of well allowables, in order to prevent waste, protect the interests of the public and all persons interested in said common source of supply, and to give to each producer and owner an opportunity to produce currently his proportionate part of the gas taken from said field, and ultimately the approximate amount of gas originally underlying his land.

19. That in the Hugoton Field, as in gas fields generally, there exist many small and separately owned tracts on which it would not be practical or profitable to drill, and the operators, lessees, and royalty owners should be encouraged to communitize said tracts into units as described in this order, and production should be divided among those interested in the proportion that the acreage is owned; provided that, if the owners in any tract are unable to agree upon a proper distribution, the Commission should determine the same and authorize the production so as to carry out the intent of the laws of the State of Oklahoma.

20. That in determining allocations in said field, only developed acreage should be considered; and developed acreage shall mean the acreage within a unit on which there is a producing well with a market outlet, or the owner of which is ready, willing, and able to make a

pipeline connection or deliver his gas to other market at the going price for gas in the field.

21. That there should be two market demand periods each year, one beginning April 1 and ending September 30, and the other beginning October 1 and ending March 31, inclusive, with the idea of dividing the periods of high demand from those of lower demand; that the Commission will hold a hearing preceding each period, at which hearings the market demand and anticipated production of gas for each month of the period will be determined by nominations from all purchasers and takers and estimates from producers, that can be produced without waste; that the Conservation Department will make monthly allocations to wells, and if the market demand or anticipated production that can be produced without waste, as determined by the Commission, is shown to have increased or decreased during any period, the Conservation Department may adjust allowables to conform thereto, subject to approval by the Commission at the next regular hearing; that the Commission may hold hearings in addition to those herein mentioned at any time it deems same advisable.

22. That in applying the allocation formula, the Conservation Department will prepare schedules which set out the anticipated production from the field and the allowable for each well for each calendar month of the period, and underproduction and overproduction which may result from application of said formula will be adjusted as hereinafter specifically set out in this order.

23. That all of the rules and regulations adopted in this order are necessary to accomplish the objects and purposes of the laws of the State of Oklahoma in the production of gas from the Hugoto Field, to prevent waste, protect the interests of the public and of all those having a

right to produce gas therefrom, provide for ratable taking, obtain a greater recovery, prevent drainage, and encourage future development.

DECLARATION OF POLICY

IT IS THE INTENTION, PURPOSE, AND POLICY OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA IN ISSUING THIS RDER TO PROMULGATE RULES AND REGULATIONS AS AUTHORIZED AND DIRECTED BY THE LAWS OF THE STATE OF OKLAHOMA GOVERNING PRODUCTION OF NATURAL GAS IN ORDER TO PREVENT WASTE, PROVIDING A UNIFORM METHOD OF DETERMINING THE NATURAL FLOW OF WELLS AND FOR RATABLE TAKING OF GAS, IN ORDER TO PROTECT THE INTERESTS OF THE PUBLIC AND ALL PARTIES INTERESTED THEREIN, AND TO GIVE EACH OPERATOR AN OPPORTUNITY TO PRODUCE CURRENTLY HIS PROPORTIONATE PART OF THE GAS AND ULTIMATELY TO PRODUCE APPROXIMATELY THE AMOUNT OF GAS ORIGINALLY UNDERLYING THE SURFACE OF THE LAND OWNED BY HIM.

IT IS NOT THE INTENTION TO LIMIT OR RESTRICT THE MARKET DEMAND FOR GAS IN THE HUGOTON FIELD, BUT ONLY TO RESTRICT PRODUCTION TO MARKET DEMAND AND PRORATE PRODUCTION EQUITABLY AND FAIRLY AMONG THE PRODUCERS AND OWNERS.

IT IS FURTHER THE INTENTION OF THE COMMISSION THAT THAT PORTION OF THE HUGOTON FIELD IN THE STATE OF OKLAHOMA

BE HEREAFTER REFERRED TO AS THE GUYMON HUGOTON FIELD.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

1. This order shall supersede Order No. 16377, heretofore issued by the Commission, and shall be effective as to the drilling and production of wells and the taking and transportation of natural gas in the Hugoton Field, located in Texas County, Oklahoma, the productive area of which covers a large part of said county and extends north into the State of Kansas and south into the State of Texas, but the boundaries of which cannot be determined with certainty until more wells are drilled. All wells in the field are producing from the same common source of supply of gas.

2. ALLOCATION FORMULA—A formula shall be, and is hereby, adopted for the purpose of allocating gas production to the wells in the field, which formula shall consist of acreage and deliverability factors, as hereinafter defined; and same formula shall be applied as herein set out.

3. ACREAGE FACTOR—(a) Each operator in said field shall divide his acreage into units, which shall be considered by the Commission as the acreage drained by each well in allocating gas production so as to protect the interests of all parties and prevent waste and equalize drainage. A unit, as used in this order, shall consist of not more than 640 acres, which shall be in one section according to the United States Governmental Survey thereof; provided that, where it is shown by clear, cogent, and convincing proof that it is impossible or impracticable to form a unit entirely within one section, the Commission may

approve an exception thereto upon the filing of an application by the operator and after due notice and hearing; but no presumption shall arise from this order that the Commission will authorize the organization of any unit where the acreage is not entirely within one section. Short sections lying adjacent to the Kansas-Oklahoma state line, which according to the United States Governmental Survey contain materially less than 640 acres may be communitized with adjoining 640-acre sections upon approval and order of the Commission after notice and hearing; provided that, the acreage factor for such unit in the allocation formula shall not exceed 800 acres.

(b) In determining the units herein prescribed, for the purpose of allocation of gas production only developed acreage shall be considered; and developed acreage shall mean any unit on which there is one or more producing wells having a pipeline connection or other market outlet or the owner or operator of which is ready, willing, and able to make a connection and dispose of his gas at the going price in the field. If the operator or owner, by affidavit or otherwise, shows to the Conservation Officer that he is ready, willing, and able to make a connection and the pipeline or other outlet refuses to take his gas, then his acreage shall be deemed developed acreage under this order.

(c) Whenever two or more leases, or parts of leases, are consolidated for the purpose of forming a unit as defined in this order, such consolidated lease shall be developed and operated as a single lease, and the gas production therefrom shall be distributed and allocated to the separate tracts within the unit in the ratio that the acreage contained in each tract within the unit bears to the whole and undivided acreage contained in the unit,

and the royalty accruing by reason of said production, unless the royalty owners otherwise unanimously agree in writing, shall be distributed, apportioned, and paid in accordance with said ratio. If the owners of separately owned tracts and the royalty owners cannot agree upon a unit and the proper distribution of the production, then the Commission will, upon application of any interested party, and after due notice and hearing, determine and order what should constitute a unit and the proper division and apportionment of the production between the owners of leases, royalties, and mineral rights in order to insure to each his just and equitable share of the production and insure equitable taking and protect the correlative rights of all interested parties.

(d) Each operator shall file a sworn statement with the Oil and Gas Conservation Department, on a form approved by the Commission, describing the acreage contained in each unit and the location of the well thereon. If there be separately owned or unitized tracts within the section upon which the well is located, such fact shall be shown. No unit shall be given an allowable until said statement is filed and approved by the Conservation Department or the Commission.

(e) Wells shall be drilled as nearly as practicable in the center of the units, and in no event shall be farther from the center thereof than the center of one of the four ten-acre tracts adjacent to the center of the unit, except upon special order of the Commission after notice and hearing.

4. (a) DELIVERABILITY FACTOR - PRESSURE.—The deliverability of each connected well in the Hugoton Field shall be determined as follows: The well shall be produced into the pipeline for approximately seventy-two (72)

hours, during which time the working pressure at the well-head shall be maintained at eighty per cent (80%) of the average shut-in well-head pressure of the field, expressed in pounds per square inch gauge and designated herein as the deliverability standard pressure, or as closely thereto as operating conditions in the field will permit. In no case shall the working well-head pressure during the test be more than ninety per cent (90%) or less than seventy per cent (70%) of the shut-in well-head pressure of the well being tested unless it can be shown to the satisfaction of the Conservation Officer that it is impracticable to maintain the pressure within the above described limits and that the accuracy of the test will not be unduly affected by failure to do so. Flow shall be measured by approved meter throughout the 72-hour test period, and the well-head pressure shall be measured by dead weight gauge at the close of the test period. The rate at which the well is producing at the end of 72 hours shall be considered the stabilized producing rate corresponding to the working well-head pressure existing at that time, provided such rate is not greater than the average producing rate for the entire 72-hour period. If the working well-head pressure at the close of the test is exactly equal to the deliverability standard pressure, then the corresponding stabilized producing rate, expressed in MCF per day at a base temperature of sixty degrees (60°) Fahrenheit and a base pressure of two pounds (2#) above atmosphere assumed to be 14.4#, shall constitute the well's deliverability. If the well-head pressure at the end of the test is either greater or less than the deliverability standard pressure, the observed stabilized producing rate shall be converted to deliverability by use of the following formula:

$$D = R \left(\frac{P^2 - Pd^2}{P^2 - Pw^2} \right)^{.85}$$

Where D = Deliverability.
R = Observed producing rate.
P = Shut-in pressure of the well, pounds absolute.
Pd = Deliverability standard pressure, converted to pounds absolute.
Pw = Working well-head pressure at Rate R, pounds absolute.

Shut-in well-head pressure shall be measured by dead weight gauge after the well has been shut in for approximately 72 hours. In no case shall the well have been shut in for less than 66 hours nor more than 78 hours at the time the shut-in pressure is taken. If the representative of the Commission should for any reason believe that the shut-in pressure taken upon a well is incorrect, he may require that such well be blown to clean fluids from the well bore, or take any such other reasonable steps that may be necessary to get a true pressure upon the well. In the event that more than one shut-in pressure is taken upon a well during the test period, the highest such shut-in pressure obtained will be used in figuring the deliverability of such well. The deliverability of each unconnected well which is recognized by the Commission as entitled to an allowable shall be estimated from its open flow considered in connection with the average relationship between open flow and deliverability of all wells in the field. When such well is connected to a pipeline its deliverability shall be redetermined by the method herein prescribed.

(b) The deliverability of each well in the field shall be determined by the Conservation Department between May 1 and September 30 of each year unless otherwise ordered by the Commission; provided that all deliverability tests taken since May 1, 1944, are hereby approved by the Commission and shall be effective as of October 1, 1944, and until new tests are taken thereafter. Deliverability tests may be taken at such other times as may be agreed upon by all of the operators within the pool, with the approval of the Conservation Officer, or at any other time within the discretion of the Conservation Officer or upon order of the Commission.

(c) The Conservation Officer shall give written notice to each operator and producer in the field of the taking of deliverability tests in sufficient time to have a representative present at the taking thereof. A written report of said tests, signed by the persons taking and witnessing the same, and approved by the Conservation Officer or his agent who took or supervised the same, shall be filed with the Commission, upon forms approved by it, which report shall be filed as soon as possible after the taking of the tests.

5. WELL ALLOWABLES—(a) In order to determine the amount of gas that should be produced from each well for any allowable period, a field allocation factor shall be determined by dividing the total anticipated production from the field for such period by the sum of the product of deliverability times the acreage factor for all the wells in the field; then multiply the field allocation factor by the product of deliverability times the acreage factor for the well; the result reached by such calculation shall constitute the well's allowable in cubic feet for such allowable period; provided, however, if at any time during any allowable period it appears to the Conservation Officer

that the actual market demand is greater or less than the anticipated production as above set out, then the Conservation Department shall immediately revise the allowable for the respective wells as set out in this paragraph. Acreage factor as used in this order shall mean the number of acres in any unit. Allowable period as used in this order shall mean a calendar month.

(b) Before a well is entitled to an allowable the deliverability shall be determined and the operator shall meet all the requirements of this order, and when a well is entitled to an allowable during any allocation period it shall be given such allowable for the remaining part of said period.

6. ALLOWABLE PERIODS — HEARINGS. There are hereby established two market demand periods for each year, one beginning April 1 and ending September 30 and the other beginning October 1 and ending March 31, inclusive; and a reasonable time before said periods the Commission will conduct a hearing for the purpose of receiving nominations and determining the monthly market demand and anticipated monthly production of gas for the period that can be produced without waste; and based upon such determination allocations to each well entitled to an allowable shall be made for each month by the Conservation Department, with the approval of the Commission. If the market demand increases or decreases during said period, and the same can be produced without waste, the Conservation Department shall change the allocations for the ensuing monthly period in accordance with such change, and shall report same to the Commission; and at the next regular hearing the allowables will be readjusted and approved by the Commission. The Commission reserves the right to conduct a hearing at any time it deems

same advisable; and additional hearings may be called upon the application of the Conservation Officer, Conservation Attorney, or any other interested party.

7. UNDERPRODUCTION AND OVERPRODUCTION — All underproduction and overproduction occurring in any alloable period, as determined by the calculation of the allocation formula, shall be adjusted and carried as a credit in favor of the wells or a charge against them, as the case may be, and added to or subtracted from the well's allowable for the next allowable period. When a well's overproduction equals three times its monthly current allowable, said well shall be immediately shut in by the operator and no gas produced therefrom until such overproduction is made up. In the event an operator refuses to shut in such well, the Conservation Officer is hereby directed to shut it in, place a seal thereon, and keep same shut in until the overage is made up. When a well connected to a pipeline or other market outlet has accumulated underage in excess of three times its current monthly allowable, same shall be canceled unless otherwise ordered by the Commission; provided that, where an operator has an allowable and is refused an outlet, the underproduction of such well shall not be canceled.

8. All purchasers, takers, and producers of gas in the Hugoton Field shall comply with the common purchaser and ratable taking provisions of the Oklahoma statutes, by purchasing, producing, and taking all of the gas without discrimination in favor of one producer as against another; and they shall not discriminate in favor of their own production, whether in price or amount, and producers and takers shall take from all wells which they can reach by their own line or by lines provided by the well owners ratably in accordance with the allocations to wells established by this order.

9. This order shall be effective as of January 1, 1945, as of 7 o'clock, A.M.

10. Jurisdiction over this cause is hereby retained for the purpose of changing, modifying, adding to, or altering this order, if at any further hearing in this cause, or from any other evidence adduced before the Commission it appears that such change, modification, addition, or alteration should be made.

11. The several provisions of this order are separable, and the validity of any one is in nowise dependent upon the validity of any other. If any provision, section, paragraph, sentence, or clause hereof shall be held to be invalid or void for any reason, the same shall in no manner affect the validity of any other provision, section, paragraph, sentence, or clause of this order.

DONE AND PERFORMED by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 27th day of December, 1944.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

REFORD BOND, Chairman

RAY O. WEEMS, Vice-Chairman

_____ Commissioner

ATTEST:

TOM MCMURRAY, Secretary

(SEAL)

APPENDIX "H"

BEFORE THE CORPORATION COMMISSION, OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF WALKER T. POUND, CONVERSATION OFFICER, FOR A WELL SPACING ORDER AND RULES AND REGULATIONS GOVERNING PRODUCTION AND RATABLE TAKING OF NATURAL GAS IN THE GUYMON HUGOTON FIELD, TEXAS COUNTY, OKLAHOMA	CAUSE CD No. 983 ORDER No. 17867

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of the State of Oklahoma in its court room in the Capitol Office Building, Oklahoma City, Oklahoma, on the 24th day of May, 1945, at 10 o'clock A.M., upon the application filed by the Conservation Officer and pursuant to order of the Commission setting the same for hearing and notice published as required by law; at which hearing, Chairman Reford Bond and Commissioners Ray O. Weems and Wm. J. Armstrong sitting, Floyd Green, Conservation Attorney, appeared for the Conservation Department and the following appearances were made: Earl Pruet and Kelsey Hutchinson for Peerless Oil and Gas Company; R. C. Foulson, George M. Green and R. M. Rainey for Republic Natural Gas Company; Colin C. Rae for Skelly Oil Company; R. M. Williams and E. G. De Parade for Phillips Petroleum Company; Del Howard and

Joe Rolston, Jr., for Cities Service Gas Company; Jarman and Jarman by Ed White for A. P. Gardner; and John Schoeppel for Waldo E. Stephens; whereupon evidence was presented in support of the application, and the Commission closed the case and took the matter under advisement.

Now, on this 31st day of May, 1945, the Commission, having considered all of the testimony and being otherwise fully advised in the premises, finds as follows:

FINDINGS

1. That notice by publication of the filing of the application herein, the time and place of the hearing thereon, and the purpose of said hearing, has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of the parties interested therein, and jurisdiction to issue and promulgate and hereinafter prescribed order.

2. That the application in this cause requests the issuance of a spacing order in the Guymon Hugoton Pool pursuant to the provisions of House Bill No. 257 of the Twentieth Session of the Oklahoma Legislature.

3. That under date of December 27, 1944, the Commission issued its Order No. 17410 in Cause CD No. 861, providing for the manner and method of determining the capacity of the wells to produce in said pool and the making of allocations to the wells, and the Conservation Department has been operating under said order since January 1st, 1945.

4. That the Hugoton Gas Field is located in the States of Oklahoma, Kansas, and Texas, and is one of the

largest gnown gas reserves in the United States; that a large portion of said field lies within Texas County, Oklahoma, and has been named by this Commission the "Guymon-Hugoton Pool"; that the probable productive area of said pool is hereinafter more specifically described in this order.

5. That the Guymon-Hugoton Pool constitutes one common source of supply of gas, although there are three or more producing horizons that are inter-connected, which are known as the Crider, Winfield, and Harrington horizons and are found at an approximate depth of 2810 feet; that an average thickness of the producing formation is 45 feet; that there are approximately 191 wells in said pool, of which approximately 156 are now producing and connected to pipe lines; that the virgin pressure in said pool was approximately 442 pounds, but at the present time it has been reduced to approximately 400 pounds; that total reserves are estimated at seven trillion cubic feet.

6. That the first gas well in said common source of supply was drilled in the year 1922; that several pipelines have been laid and several companies have interests in said pool and are now engaged in the drilling and production of gas wells or in the transmission of gas from said pool, or both.

7. That pressure differentials exist to some extent between the wells and leases in said field, which appears to be due primarily to the fact that some wells have been produced for a longer period and have produced more gas than others, which shows that there is some migration of gas from some leases to others, and unless action is taken by the Commission the differentials will increase and cause inequities due to drainage, and waste will result. It is common knowledge that gas in a formation migrates toward the wells that are on production and have the lowest pres-

sure, and that drainage thus caused, which if not equalized by counterdrainage from other properties, results in disproportionate production by the wells on the respective properties.

8. That the Conservation Department has taken production tests at various times in said pool in compliance with Orders Nos. 16377 and 17410 heretofore issued by this Commission; that the most recent tests have been made in compliance with said Order No. 17410, which takes into consideration acreage and deliverability; that well allowables have been established for the producing wells in said pool, and said allowables are set out in Exhibits Nos. 6 and 7 introduced in evidence in this cause; that this order should become effective as of June 1, 1945, and Order No. 17410 should be inoperative as of said date.

9. That the full production of gas from wells in said pool is greatly in excess of the market demand and of the transportation and marketing facilities.

10. That in the years 1913 and 1915 the Legislature of the State of Oklahoma enacted laws governing the production and ratable taking of natural gas and prohibiting the waste thereof, and authorizing and directing the Corporation Commission to promulgate rules and regulations for determination of the natural flow of wells and the taking of natural gas from the common sources of supply within the State so as to prevent waste, provide for ratable taking, and protect the interests of the public and all those having a right to produce therefrom; and the Commission was therein authorized and directed to give due regard to the acreage drained by each well in determining the amount of gas that should be produced from any common source of supply and fixing well allowables; such rules and regulations to give to each owner or lessee an opportunity

to produce as nearly as possible all of the natural gas located in its original state under the property owned by him, and permit him to produce it ratably with other persons having an interest therein and wells located thereon; that in the years 1933 and 1935 the Legislature enacted additional statutes which pertain principally to oil production, but in general providing that production of oil and gas in such manner as to constitute waste is prohibited, and authorizing and directing the Corporation Commission to make and promulgate rules and regulations for the prevention of such waste.

11. That pursuant to said statutes the Corporation Commission in January, 1945, adopted general rules and regulations providing for the taking of potentials and for ratable taking of gas, which were and are applicable to all gas fields in this State, being Order No. 17528; that because of special conditions obtaining in the Guymon-Hugoton Pool said rules and regulations are insufficient to carry out the objects of the laws as to gas production; and in order to prevent waste, insure ratable taking, protect the interests of the public and all parties interested therein, to prevent any lessee from securing an unfair proportion of the gas in said pool, and to give to each lessee and royalty owner an opportunity to recover the gas originally underlying the surface of the land owned by him, it is necessary to promulgate special rules and regulations for the Guymon-Hugoton Pool; that the provisions of the general Order No. 17528 should govern in all instances with the exception that in event of a conflict the special rules and regulations set out in this order should prevail.

12. That the allocation formula hereinafter set out in this order should be adopted by the Commission to

permit each well to currently produce its ratable share of the gas and ultimately to produce the approximate amount originally underlying the lease, to protect the interests of the public and of all parties interested therein, and prevent waste; that in such formula many factors are considered, such as percentage of the well's capacity to produce, acreage, pressures, porosity, permeability, and thickness of the formation, of which acreage and percentage of capacity to produce are the most important; that in determining the ability of the well to put gas into a pipeline against pipeline pressure, which is known as deliverability, natural flow, pressure, porosity permeability, and thickness of the formation should be considered.

13. That it appears that one well in said pool will adequately drain 640 acres without waste; that all wells heretofore drilled have been in one section as laid out by the Governmental Survey; that drilling units should be established for said Guymon-Hugoton Pool which should contain not to exceed 640 acres within one Governmental section; provided however, that the short sections lying adjacent to the Oklahoma-Kansas State Line should be added to the unit immediately south of the short section, but in no event should any unit comprise more than 800 acres; that each well hereafter drilled should be located in the center of its unit or in any event not farther from the center than 467 feet; that in figuring allowables, if a unit contains more than 640 acres, that fact should be taken into consideration.

14. That the deliverability factor, hereinafter set out in this order, which takes into consideration each well's capacity to produce, porosity, permeability, pressures, thickness of the formation, and other factors, should be adopted in making allocations to wells in the pool.

15. That the establishment of the acreage and deliverability factors, as hereinafter set out in this order, is necessary for determination of well allowables, in order to prevent waste, protect the interests of the public and all persons interested in said common source of supply, and to give to each producer and owner an opportunity to produce currently his proportionate part of the gas originally underlying his land.

16. That under Enrolled House Bill No. 257 enacted by the Twentieth Session of the Oklahoma Legislature, only one well may be drilled in any unit, and where there are divided or undivided interests, or both, in a unit, and they are unable to agree upon a pooling of their interests in the development of the unit, either or all of the interested parties may file an application with this Commission for a pooling order, and this Commission, after notice and hearing, shall issue an order that is fair and reasonable for all interested parties and that will insure to each and all of the interested parties their fair proportion of the gas underlying said unit; provided however, that in figuring and making allocations, until such time as the working interests of the various owners within a unit are pooled, only the acreage of the lessee owning and operating the well shall be taken into consideration.

17. That all of the royalty owners in a unit should participate in the proceeds of any well produced in the unit in the ratio that the acreage of the royalty owned bears to to the total acreage of the unit.

18. That in determining allocations in said pool, only developed acreage should be considered, and developed acreage should mean the acreage within a unit on which there is a producing well with a market outlet, or the owner of which is ready, willing, and able to permit

or to make a pipeline connection or deliver his gas to other market at the going price for gas in the field, and the allowable for such unconnected well should begin as hereinafter provided in this order.

19. That there should be two market demand periods each year, one beginning April 1 and ending September 30, and the other beginning October 1 and ending March 31, inclusive, with the idea of dividing the periods of high demand from those of lower demand; that the Commission will hold a hearing receding each period, at which hearings the market demand and anticipated production of gas for each month of the period will be determined by nominations from all purchasers and takers and estimates from producers, that can be produced without waste; that the Conservation Department will make monthly allocations to wells, and if the market demand or anticipated production that can be produced without waste, as determined by the Commission, is shown to have increased or decreased during any period, the Conservation Department may adjust allowables to conform thereto, subject to approval by the Commission at the next regular hearing; that the Commission may hold hearings in addition to those herein mentioned at any time it deems advisable.

20. That in applying the allocation formula, the Conservation Department will prepare schedules which set out the anticipated production from the field and the allowable for each well for each calendar month of the period; and underproduction and overproduction which may result from application of said formula will be adjusted as hereinafter specifically set out in this order.

21. That all of the rules and regulations adopted in this order are necessary to accomplish the objects and purposes of the laws of the State of Oklahoma in the produc-

tion of gas from the Guymon-Hugoton Pool, to prevent waste, protect the interests of the public and of all those having a right to produce gas therefrom, provide for ratable taking, obtain a greater recovery, prevent drainage not offset by counterdrainage, and encourage future development.

DECLARATION OF POLICY

IT IS THE INTENTION, PURPOSE, AND POLICY OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA IN ISSUING THIS ORDER TO PROMULGATE RULES AND REGULATIONS AS AUTHORIZED AND DIRECTED BY THE LAWS OF THE STATE OF OKLAHOMA GOVERNING PRODUCTION OF NATURAL GAS IN ORDER TO PREVENT WASTE, PROVIDING A UNIFORM METHOD OF DETERMINING A PERCENTAGE OF THE WELL'S CAPACITY TO PRODUCE, AND FOR RATABLE TAKING OF GAS, IN ORDER TO PROTECT THE INTERESTS OF THE PUBLIC AND ALL PARTIES INTERESTED THEREIN, AND TO GIVE EACH OPERATOR AN OPPORTUNITY TO PRODUCE CURRENTLY HIS PROPORTIONATE PART OF THE GAS AND ULTIMATELY TO PRODUCE APPROXIMATELY THE AMOUNT OF GAS ORIGINALLY UNDERLYING THE SURFACES OF THE LAND OWNED BY HIM.

IT IS NOT THE INTENTION TO LIMIT OR RESTRICT THE MARKET DEMAND FOR GAS IN THE GUYMON HUGOTON POOL, BUT ONLY TO RESTRICT PRODUCTION TO MARKET DEMAND AND PRORATE PRODUCTION EQUITABLY AND FAIRLY AMONG THE PRODUCERS AND OWNERS.

IT IS FURTHER THE INTENTION OF THE COMMISSION THAT THAT PORTION

OF THE HUGOTON FIELD IN THE STATE OF OKLAHOMA BE REFERRED TO AS THE GUYMON HUGOTON POOL.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:

1. This order shall supersede Order No. 17410 issued by the Commission on the 27th day of December, 1944, in Cause CD No. 861, and shall be effective as of June 1, 1945, for the drilling and production of wells and the taking and transportation of natural gas in the Guymon-Hugoton Pool.

2. Drilling and/or spacing units, 640 acres in size consisting of one section according to the United States Governmental Survey, are hereby established for the development of the Guymon-Hugoton Pool located in Texas County, State of Oklahoma, the probable productive area of which covers parts of the following described townships, to-wit:

Township One (1) North, Ranges Twelve (12) to Seventeen (17) East;

Townships Two (2), Three (3), and Four (4) North, Ranges Twelve (12) to Eighteen 18) East; and

Townships Five (5) and Six (6) North, Ranges Twelve (12) to Nineteen (19) East of the Cimarron Meridian;

which area may be extended by the drilling of additional wells, it being the intention to cover all of the productive area of said common source of supply, and any wells drilled into said common source of supply outside the area above described shall be drilled in the manner and according to the pattern herein described.

The short sections lying adjacent to the Kansas-Oklahoma State Line shall be added to and made a part of the unit immediately to the south of the short section, but in no event shall any unit comprise more than 800 acres.

Each well hereafter drilled in said pool shall be drilled in the center of its unit, and in no event farther than 467 feet from the center of the unit, which shall apply to the units comprising the short sections herein mentioned; provided that, an exception is hereby allowed for the five or six wells heretofore drilled to points other than the center of their units, which wells shall be treated as the well for its unit and no additional well shall be drilled therein.

3. ALLOCATION FORMULA—A formula shall be, and is hereby adopted for the purpose of allocating gas production to the wells in the pool, which formula shall consist of acreage and deliverability factors, as herein defined; and said formula shall be applied as herein set out.

4. ACREAGE FACTOR—(a) The acreage factor in said pool to be used in the allocation formula shall be 640 acres, and in no event more than 800 acres, as provided in paragraph 2 hereof.

(b) In determining the units herein prescribed, for the purpose of allocation of gas production, only developed acreage shall be considered; and developed acreage shall mean any unit on which there is a producing well having a pipeline connection or other market outlet or the owner or operator of which is ready, willing, and able to permit or to make a connection and dispose of his gas at the going price in the field. If the operator or owner, by affidavit or otherwise, shows to the Conservation Officer that he is ready, willing, and able to permit or to make a connection and the pipeline or other outlet refuses to take his gas, then his acreage shall be deemed developed acreage under this order. *Before any unconnected well shall be granted*

an allowable, the operator shall tender its gas production to a purchaser by registered mail, and copy of said letter of tender shall be sent to the Conservation Officer. If at the end of thirty days no connection has been made and the Conservation Officer is satisfied that the operator has made such tender in good faith, then the Conservation Officer shall fix an allowable for said well to commence at the end of such thirty-day period; provided further, when there is no dispute between the seller and the purchaser, the producer or the purchaser shall file an affidavit on a form prescribed by the Commission, showing the date the well was connected and actual production was commenced, on which date the allowable shall be fixed for said well.

(c) When there are divided or undivided interests, or both, within any spacing unit and the owners of such interests are unable to agree upon a pooling of their interests in producing the unit, then the rights and obligations of such parties shall be determined by the Commission as provided in Section 4 of Enrolled House Bill No. 257 enacted by the Twentieth Session of the Legislature of Oklahoma, which by reference is made a part hereof as fully as if set out herein. Likewise any interested royalty owner and any party at interest shall have the right to apply to the Commission for a pooling order to enforce the pooling of all interests within the unit.

(d) Each operator shall file a sworn statement with the Oil and Gas Conservation Department, on a form approved by the Commission, describing the acreage contained in each unit and the location of the well thereon. If there be separately owned or unitized tracts within the section upon which the well is located, such fact shall be shown. No unit shall be given an allowable until said statement is filed and approved by the Conservation Department or the Commission.

(e) Wells shall be drilled as nearly as practicable in the center of the unit, and in no event shall be farther from the center than 467 feet, except upon special order of the Commission after notice and hearing.

5. (a) DELIVERABILITY FACTOR — PRESSURE — The deliverability of each connected well in said pool shall be determined as follows: The well shall be produced into the pipeline for approximately seventy-two (72) hours, during which time the working pressure at the well-head shall be maintained at eighty per cent (80%) of the average shut-in well-head pressure of the field, expressed in pounds per square inch gauge and designated herein as the deliverability standard pressure, or as closely thereto as operating conditions in the pool will permit. In no case shall the working well-head pressure during the test be more than ninety per cent (90%) or less than seventy per cent (70%) of the shut-in well-head pressure of the well being tested unless it can be shown to the satisfaction of the Conservation Officer that it is impracticable to maintain the pressure within the above described limits and that the accuracy of the test will not be unduly affected by failure to do so. Flow shall be measured by approved meter throughout the 72-hour test period, and the well-head pressure shall be measured by dead weight gauge at the close of the test period. The rate at which the well is producing at the end of 72 hours shall be considered the stabilized producing rate corresponding to the working well-head pressure existing at that time, provided such rate is not greater than the average production rate for the entire 72-hour period. If the working well-head pressure at the close of the test is exactly equal to the deliverability standard pressure, then the corresponding stabilized producing rate, expressed in MCF per day at a base temperature of sixty degrees (60°) Fahrenheit and a base pressure of two pounds (2#) above

atmosphere assumed to be 14.4# shall constitute the well's deliverability. If the well-head pressure at the end of the test is either greater or less than the deliverability standard pressure, the observed stabilized producing rate shall be converted to deliverability by use of the following formula:

$$D = R \left(\frac{(P^2 - Pd^2)}{(P^2 - Pw^2)} \right)^{.85}$$

Where D = Deliverability
R = Observed producing rate
P = Shut-in pressure of the well, pounds absolute
Pd = Deliverability standard pressure, converted to pounds absolute
Pw = Working well-head pressure at Rate R, pounds absolute

Shut-in well-head pressure shall be measured by dead weight gauge after the well has been shut in for approximately 72 hours. In no case shall the well have been shut in for less than 66 hours nor more than 78 hours at the time the shut-in presure is taken. If the representative of the Commission should for any reason believe that the shut-in pressure taken upon a well is incorrect, he may require that such well be blown to clean fluids from the well bore, or take any such other reasonable steps that may be necessary to get a true pressure upon the well. In the event that more than one shut-in pressure is taken upon a well during the test period, the highest such shut-in pressure obtained will be used in figuring the deliverability of such well. The deliverabilty of each unconnected well which is recognized by the Commission as entitled to an allowable shall be estimated from its estimated capacity to produce considered

in connection with the average relationship between the estimated capacity to produce and deliberability of all wells in the pool on which such tests have been made. When such well is connected to a pipeline its deliverability shall be redetermined by the method herein prescribed, and such allowable shall be made retroactive to the date when the well was first entitled to an allowable.

(b) The deliverability of each well in the pool shall be determined by the Conservation Department between May 1 and September 30 of each year unless otherwise ordered by the Commission; provided that, all deliverability tests taken since May 1, 1944, are hereby approved by the Commission and shall be effective as of June 1, 1945, and until new tests are taken thereafter. Deliverability tests may be taken at such other times as may be agreed upon by all of the operators within the pool, with the approval of the Conservation Officer, or at any other time within the discretion of the Conservation Officer or upon order of the Commission. When any well is connected to a pipeline, its deliverability shall be determined by the Conservation Department.

(c) The Conservation Officer shall give written notice to each operator and producer in the pool of the taking of deliverability tests in sufficient time to have a representative present at the taking thereof. A written report of said tests, signed by the persons taking and witnessing the same, and approved by the Conservation Officer or his agent who took or supervised the same, shall be filed with the Commission, upon forms approved by it, which report shall be filed as soon as possible after the taking of the tests.

6. WELL ALLOWABLES—(a) In order to determine the amount of gas that should be produced from each well for any allowable period, a pool allocation factor shall be determined by dividing the total anticipated production from the pool for such period by the sum of the product of

deliverability times the acreage factor for all the wells in the pool; then multiply the pool allocation factor by the product of deliverability times the acreage factor for the well; the result reached by such calculation shall constitute the well's allowable in cubic feet for such allowable period; provided however, if at any time during any allowable period it appears to the Conservation Officer that the actual market demand is greater or less than the anticipated production as above set out, then the Conservation Department shall immediately revise the allowable for the respective wells as set out in this paragraph. Acreage factor as used in this order shall mean the number of communitized acres in any unit. Allowable period as used in this order shall mean a calendar month.

(b) When a well is entitled to an allowable, the deliverability shall be determined and the operator shall meet all the requirements of this order, and when a well is entitled to an allowable during any allocation period it shall be given such allowable for the remainder of said period.

7. ALLOWABLE PERIODS — HEARINGS — There are hereby established two market demand periods for each year, one beginning April 1st and ending September 30th and the other beginning October 1, and ending March 31st, inclusive; and a reasonable time before said periods the Commission will conduct a hearing for the purpose of receiving nominations and determining the monthly market demand and anticipated monthly production of gas for the period that can be produced without waste; and based upon such determination allocations to each well entitled to an allowable shall be made for each month by the Conservation Department, with the approval of the Commission. If the market demand increases or decreases during said period, and the same can be produced without waste, the Conservation Department shall change the allocations for the

ensuing monthly period in accordance with such change, and shall report same to the Commission; and at the next regular hearing the allowables will be readjusted and approved by the Commission. The Commission reserves the right to conduct a hearing at any time it deems same advisable; and additional hearings may be called upon application of the Conservation Officer, Conservation Attorney, or any interested party.

8. UNDERPRODUCTION AND OVERPRODUCTION — All underproduction and overproduction occurring in any allowable period, as determined by the calculation of the allocation formula, shall be adjusted and carried as a credit in favor of the wells or a charge against them, as the case may be, and added to or subtracted from the well's allowable for the next allowable period. When a well's overproduction equals three times its monthly current allowable, said well shall be immediately shut in by the operator and no gas produced therefrom until such overproduction is made up. In the event an operator refuses to shut in such well, the Conservation Officer is hereby directed to shut it in, place a seal thereon, and keep same shut in until the overage is made up. *When a well connected to a pipeline or other market outlet has accumulated underage in excess of three times its current monthly allowable, it shall be canceled unless otherwise ordered by the Commission; provided that, where an operator has an allowable and is refused an outlet, the underproduction of such well shall not be canceled.*

9. All purchasers, takers, and producers of gas in the pool shall comply with the common purchaser and ratable taking provisions of the Oklahoma statutes by the equitable purchasing, producing, and taking of all the gas without discrimination in favor of one producer as against another; and they shall not discriminate in favor of their own pro-

duction, whether in price or amount, and producers and takers shall take from all wells which they can reach by their own line or by lines provided by the well owners, ratably in accordance with the allocations to wells established by this order.

10. In establishing allowables after the effective date of this order, only that acreage owned by the lessee operating a well shall be considered in the acreage factor until such time as the owners of working interests in the unit agree on a method of pooling their interests and producing the well, or until the Commission by proper order has after notice and hearing issued a pooling order for the unit.

11. All monthly reports required by this order or any order of the Commission relating to the production of gas from the Guymon-Hugoton Pool shall be filed with the Conservation Department not later than the 5th day of the month succeeding the month in which the gas was produced.

12. Jurisdiction over this cause is hereby retained for the purpose of changing, modifying, adding to, or altering this order, if at any further hearing or from other evidence adduced before the Commission it appears that such change, modification, addition, or alteration should be made.

13. The several provisions of this order are separable, and the validity of any one is in nowise dependent upon the validity of any other. If any provision, section, paragraph, sentence, or clause hereof shall be held to be invalid or void for any reason, the same shall in no manner affect the validity of any other provision, section, paragraph, sentence, or clause of this order.

DONE AND PERFORMED by the Corporation Commission at its offices in the Capitol Office Building, Oklahoma City, Oklahoma, this 31st day of May, 1945.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

REFORD BOND, Chairman

RAY O. WEEMS, Vice-Chairman

.....Commissioner

ATTEST:
TOM MCMURRAY
Secretary

(SEAL)